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Thursday
January 23, 1986

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-169-AD; Amdt. 39-5222]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to all Boeing Model 727 airplanes, which requires repetitive visual inspection for cracks and repair, if necessary, of the aft pressure bulkhead (Body Station 1183) web and strap. This action is prompted by a recent report of web and strap cracks. These cracks, if allowed to grow to the adjacent web and strap, can result in rapid decompression of the airplane during flight.

DATES: Effective February 6, 1986.

Comments must be received on or before February 6, 1986.

ADDRESSES: Send comments on this final rule in duplicate to FAA, Northwest Mountain Region, Office of the Regional Counsel, ATTN: Airworthiness Rules Docket 85-NM-169-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The service information specified in this AD may be obtained upon request to Boeing Commerical Airplane Company, P.O. Box 3707, Seattle, Washington 98124. The information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Airframe Branch, ANM-120S; telephone (206) 431-2924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Recently, fatigue cracks have been detected in the aft pressure bulkhead web (Body Station 1183) at WL188 between RBL 20 and RBL 45. This situation, if not corrected, could result in cracking of the adjacent web, which could result in a rapid decompression during flight.

On September 6, 1985, Boeing issued Service Bulletin Number 727-53-0171, which provides a procedure for inspection of the aft pressure bulkhead for cracks and repair, as depicted in the −1 repair kit in Boeing Drawing Number 65C31446 referenced therein. The FAA has determined that repairs made in accordance with the −1 repair kit will require repetitive inspections.

Since the issuance of that service bulletin, Boeing has also developed a −3 repair kit, depicted in Boeing Drawing Number 65C31446, which repairs the fatigue cracks and eliminates the problem of future fatigue cracks. The FAA determined that incorporation of the −3 repair kits eliminates the need for repetitive inspections.

Boeing is currently developing additional data to provide a modification that will eliminate the need for repetitive inspections of those airplanes not repaired in accordance with the −3 repair kit. The FAA will consider an amendment to this AD to incorporate that modification when it has been developed.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires inspection for cracks of the aft pressure bulkhead in accordance with Boeing Service Bulletin 727-53-0171 and, if cracks are found, repair prior to further flight.

Further, since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule, which involves an emergency and, thus, was not preceded by notice and public procedure, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this AD. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket 85-NM-169-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. All communications received before the closing date will be considered by the Administrator and the AD may be changed in light of the comments received.

The FAA has determined that this regulation is an emergency regulation that is not major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 727 series airplanes, certificated in any category.

To detect cracks in the Body Station 1183 pressure bulkhead web and strap, accomplish the following:

A. For airplanes with 40,000 or more flight cycles on the effective date of this AD, within the next 300 flight cycles, unless accomplished within the last 3,200 flight cycles, and thereafter at intervals not to

exceed 3,500 flight cycles, inspect and repair, if necessary, in accordance with paragraph D., below.

B. For airplanes with 33,000 or more flight cycles and less than 40,000 flight cycles on the effective date of this AD, within the next 1,500 flight cycles, unless accomplished within the last 2,000 flight cycles, and thereafter at intervals not to exceed 3,500 flight cycles, inspect and repair, if necessary, in accordance with paragraph D., below.

C. For airplanes with fewer than 33,000 flight cycles on the effective date of this AD, prior to the accumulation of 30,000 flight cycles or within the next 3,500 flight cycles after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 3,500 flight cycles, inspect and repair, if necessary, in accordance with paragraph D., below.

D. Accomplish a close visual inspection of the web and strap for cracks in accordance with Figure 1 of Boeing Service Bulletin 727-53-0171, dated September 6, 1985, or later FAA-approved revision. If any cracks are detected, repair prior to further flight in accordance with the −1 or −3 repair kits in Boeing Drawing Number 65C31446.

E. For airplanes repaired in accordance with the −1 repair kit in Boeing Drawing Number 65C31446, repeat the inspection of paragraph D., above, within the next 15,000 flight cycles after the repair and thereafter at intervals not to exceed 3,500 flight cycles.

F. For airplanes repaired in accordance with −3 repair kit in Boeing Drawing Number 65C31446, the repetitive inspection requirements of this AD are terminated.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

H. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 6, 1986.

Issued in Seattle, Washington, on January 15, 1986.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 86-1361 Filed 1-22-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 85-NM-86-AD; Amdt. 39-5220]

Airworthiness Directives; Fokker B.V. Model F27 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that requires deletion of the prestall warning circuits from the flap down limit switch on certain Fokker Model F27 series airplanes. One case of a shorted flap down limit switch caused flap extension, when not selected, through the prestall warning circuits. Unselected flap extension could result in structural failure.

DATES: Effective February 28, 1986.

Compliance: Compliance is required within 60 days after the effective date, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from the Manager, Maintenance and Engineering, Fokker B.V., Product Support, P.O. Box 7600, 11172] Schiphol Oost, The Netherlands. The information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark E. Baldwin, Standardization Branch, ANM-113; telephone (206) 431-2978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires deletion of the prestall warning circuits from the flap down limit switch on certain Fokker Model F27 airplanes was published in the **Federal Register** on August 23, 1985 (50 FR 34160). This action was considered necessary to preclude unselected flap extension in flight which could cause structural failure.

The comment period for the NPRM, which ended October 15, 1985, afforded interested persons an opportunity to participate in making the rule. Only one comment was received, from an operator of Fokker F27 airplanes, recommending that the proposed AD be adopted.

After a careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that there are 40 airplanes on the U.S. Register which are currently active. During an earlier investigation, it has been determined that all the the airplanes on the U.S. Register, to which the modification applies, had already been modified. However, other airplanes are eligible for import onto the U.S. Register. This AD will ensure that unsafe conditions are corrected in the event affected airplanes are imported. The labor costs are estimated at 2 manhours per airplane and $40 per manhour, for a total cost of $80 for each affected airplane.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($80.). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Fokker B.V.: Applies to Model F27 airplanes, certificated in any category, serial numbers 10102 to 10642 inclusive, and 10644. Compliance required within 60 days after the effective date of this AD, unless already accomplished:

A. To prevent unselected flap extension, isolate the prestall warning power supply wires from the flap down limit switch in accordance with Fokker Service Bulletin F27/34-52, dated March 23, 1983.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to

operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Manager, Maintenance and Engineering, Fokker B.V., Product Support, P.O. Box 7600, 1117 2J Schiphol Oost, The Netherlands. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 28, 1986.

Issued in Seattle, Washington, on January 14, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-1363 Filed 1-22-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-87-AD; Amdt. 39-5221]

Airworthiness Directives; Fokker B.V. Model F28 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that requires inspection of the pilots' restraint harnesses and the emergency lighting system on certain Fokker Model F28 series airplanes, and replacement, modification, or repair, as necessary, to correct certain unsafe conditions which may exist. This action is necessary to ensure the flight crew is properly restrained and that the emergency lighting system properly illuminates door operating instructions.

DATES: February 28, 1986.

ADDRESSES: The applicable service information may be obtained upon request from the Manager, Maintenance and Engineering, Fokker B.V., Product Support, P.O. Box 7600, 1117 2J Schiphol Oost, The Netherlands. The information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark E. Baldwin, Standardization Branch, ANM-113; telephone (206) 431-2978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires replacement of the spring and a mounting collar in the inertia reel assemblies, used with the pilot and copilot seats, with parts of a new design, and modification of the emergency lighting system, was published in the **Federal Register** on August 23, 1985 (50 FR 34161).

The comment period for the proposed rule, which ended October 15, 1985, afforded interested persons an opportunity to participate in making the rule. No comments were received.

After a careful review of the available data the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that there are 30 Fokker F28 airplanes on the U.S. register which are currently active. None of these airplanes are affected by these service bulletins. However, airplanes that are affected may be imported and placed onto the U.S. register in the future. This AD will ensure that unsafe conditions are corrected in that event. It will require a total of 25 manhours at $40 per manhour to accomplish the requirements of this AD. Parts are estimated to be $431 per airplane. Based on these figures, the total cost per airplane will be $1,431.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($1,431.). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Fokker B.V.: Applies to Model F28 airplanes as indicated in the applicability statement of each service bulletin listed below. Compliance is required within the next 120 days after the effective date of this airworthiness directive, unless already accomplished:

A. To prevent loss of the pilot and copilot restraint function of the safety harnesses, replace the inertia reel springs and mounting collars in accordance with Fokker Service Bulletin F28/25-93, dated June 4, 1984, and Teleflex Morse Limited Service Bulletin 25-00-185429, Issue 2, dated September 1983.

B. To ensure that instruction placards on the service/emergency door in emergency lighting conditions are legible, modify the emergency lighting system in accordance with Fokker Service Bulletin F28/33-32, dated September 17, 1984.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

D. Special flight permits may be used in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Manager, Maintenance and Engineering, Fokker B.V., Product Support, P.O. Box 7600, 1117 2J Schiphol Oost, The Netherlands. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This Amendment becomes effective February 28, 1986.

Issued in Seattle, Washington, on January 14, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-1364 Filed 1-22-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-172-AD; Amdt. 39-5223]

Airworthiness Directives; Gates Learjet Model 55 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment amends an existing airworthiness directive (AD) which currently requires increasing the minimum landing distances by inserting revised information in the Airplane Flight Manual (AFM) and provides for certain modifications which constitute terminating action for the landing distance increases. This amendment is needed to replace those modifications, which have been determined to create an unsafe condition, with modifications that have been determined to accomplish the originial intent.

DATES: Effective February 6, 1986.

Comments must be received on or before February 6, 1986.

ADDRESSES: The applicable service information may be obtained from Gates Learjet Corporation, P.O. Box 7707, Wichita, Kansas 67277. This information may also be examined at, and comments may be sent to, FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Bennett L. Sorensen, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4433.

SUPPLEMENTARY INFORMATION: This amendment amends AD 85-22-08, Amendment 39-5166 (50 FR 45098; October 30, 1985), which currently requires increasing the minimum landing distances by inserting revised information in the Airplane Flight Manual (AFM), and provides for certain modifications which constitute terminating action for the landing distance increases. After issuing that AD, the FAA has determined that those modifications to airplanes equipped with thrust reversers may have the effect of shutting off anti-ice bleed air during flight if a thrust reverser unlock indication is experienced. This condition, if not corrected, could result in loss of wing anti-icing capability.

In addition, Gates Learjet has issued revised Service Bulletin 55-27-7A (dated December 12, 1985) and Airplane Modification Kit 55-84-7B (dated December 12, 1985), the incorporation of which will accomplish the intent of the original AD without creating the incidental unsafe condition. It should be noted that Airplane Accessory Kit 55-83-4 (unchanged), referenced in AD 85-22-08, does not create the unsafe conditions and, therefore, continues to accomplish the intent of the original AD.

Since this situation is likely to exist or develop on other airplanes of the same type design, this amendment revises the references to the modifications constituting terminating action and the corresponding provisions of the applicability statement, and requires removal of the previously referenced modification from airplanes equipped with thrust reversers.

Since a situation exits that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule, which involves an emergency and, thus, was not preceded by notice and public procedure, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this AD. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-172-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. All communications received before the closing date will be considered by the Administrator, and the AD may be changed in light of the comments received.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation, safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By amending Amendment 39-5166 (50 FR 45098; October 30, 1985), AD 85-22-08, as follows:

(a) Revise paragraphs B. and C. as follows:

B. In order to comply with the requirements of paragraph A., above, a copy of this AD may be used as a temporary amendment to the Airplane Flight Manual (AFM) and carried in the airplane as part of the AFM until replaced by Gates Learjet-published Temporary Flight Manual (TFM) Changes TFM 85-17, TFM 85-18, and TFM 85-19.

C. Temporary Flight Manual (TFM) Changes TFM 85-17, TFM 85-18, and TFM 85-19 may be removed from the AFM upon incorporation of either Gates Learjet Service Bulletin (SB) 55-27-7A (dated December 12, 1985), Airplane Modification Kit (AMK) 55-84-7B (dated December 12, 1985), or Airplane Accessory Kit (AAK) 55-83-4.

(b) Add new paragraphs D. and E., as follows:

D. For airplanes equipped with thrust reversers modified in accordance with Gates Learjet SB 55-27-7 or AMK 55-84-7A, that modification (SB 55-27-7 or AMK 55-84-7A) must be removed within the next 30 days after the effective date of this AD.

E. For airplanes not equipped with thrust reversers, modification in accordance with Gates Learjet SB 55-27-7 or AMK 55-84-7A constitutes terminating action for the requirements of this AD.

(c) Re-letter original paragraph D. as paragraph F.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Gates Learjet Corporation, P.O. Box 7707, Wichita, Kansas 67277. These documents also may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas.

This Amendment becomes effective February 6, 1986.

Issued in Seattle, Washington, on January 15, 1986.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 86-1359 Filed 1-22-86; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 33-6618; 34-22788; IC-14894; File No. S7-35-85]

Tender Offers by Issuers

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission has adopted amendments to Rule 13e-4, which regulates cash tender offers and exchange offers by issuers for their equity securities.

The amendments require that an issuer tender offer subject to the rule remain open for a minimum period of 20 business days, and that securities be accepted on a pro rata basis from among securities tendered throughout the offer if a greater number of securities is tendered than the number the issuer is willing to accept. The amendments require an initial minimum 15 business day period during which tendered securities can be withdrawn and require an issuer to extend withdrawal rights on the date, and until the expiration of ten business days following the date, of commencement by a third party tender offer for the issuer's securities. In addition, the amendments require that an issuer tender offer remain open for a minimum period of ten business days from the date of an increase in the consideration offered or the price paid to dealers to solicit shareholders to tender their shares to the issuer. The amendments also revise the definition of the term business day, and specify that the time periods shall run concurrently, not consecutively. Companion amendments have been adopted to Rule 14e-1.

EFFECTIVE DATE: March 1, 1986.

FOR FURTHER INFORMATION CONTACT: Nancy J. Burke at (202) 272-2848, or Deren E. Manasevit at (202) 272-7494, Office of Legal Policy and Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Background

In August 1979, the Commission adopted Rule 13e-4 [1] ("Rule"), and a related Schedule 13E-4 [2] under the Securities Exchange Act of 1934 ("Exchange Act") [3] regulating cash tender offers and exchange offers by issuers for their equity securities.[4] The Rule and Schedule are patterned substantially on the regulatory scheme established by sections 14(d) and 14(e) of the Exchange Act [5] and the rules promulgated thereunder relating to tender offers made by third parties for an issuer's equity securities.

On July 1, 1985, the Commission proposed amendments [6] to Rules 13e-4 and 14e-1 [7] under the Exchange Act together with publication of proposed Rule 14d-10 under the Exchange Act.[8] In this release, the Commission is adopting the proposed amendments to Rules 13e-4 and 14e-1 solely as they relate to the time periods applicable to tender offers by issuers for their own securities.[9]

II. Amendments to the Time Periods

In the Proposing Release, the Commission proposed several amendments to the time periods specified for issuer tender offers whose purpose was primarily to bring those time periods into conformity with the time periods specified for third party offers. Sixteen comment letters were submitted on the proposed amendments to the time periods.[10]

As discussed extensively in the Proposing Release, the minimum offering, withdrawal, and proration periods specified by the Rule for issuer tender offers are generally shorter than those specified for third party offers by Rules 14d-7, 14d-8, and 14e-1 under the Exchange Act.[11] The disparity between the time periods may create confusion detrimental to shareholders, and may give issuers making defensive issuer tender offers unfair advantages over competing third party offers. In addition, tender offer practices have changed substantially since the Rule was adopted. Issuer tender offers more frequently are being made as defenses to hostile third party offers, and the consideration being offered by the issuer to its security holders has become increasingly more complicated and difficult to evaluate. The Commission believes that bringing the minimum offering, withdrawal, and proration periods into conformity with those governing third party offers will reduce the confusion inherent in disparate time periods, will reform the Rule to account for changes in tender offer practices, and will remove any unfair advantages that the shorter periods may afford issuers making tender offers in competition with third party tender offers.

A. Offering Periods

Currently, paragraph (f)(1) of the Rule requires an issuer tender offer to remain open for at least 15 business days from its commencement.[12] Rule 14e-1(a) requires an issuer tender offer to remain open for a minimum of 20 business days (the same period required by Rule 14e-1(a) for third party offers) if the issuer tender offer is made "in anticipation of or in response to" a third party offer.[13] As the Commission discussed in the Proposing Release,[14] recent developments in tender offer practices, such as large issuer tender offers involving complicated packages of debt and equity securities, suggest that the minimum offering periods required by

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[1] 17 CFR 240.13e-4.

[2] 17 CFR 240.13e-101.

[3] 15 U.S.C. 78a *et seq.*

[4] Securities Exchange Act Release No. 16112 (August 16, 1979), 44 FR 49406 (August 22, 1979). The Rule was proposed for public comment in Securities Exchange Act Release No. 14234 (December 7, 1977), 42 FR 63066 (December 14, 1977).

[5] 15 U.S.C. 78n (d) and (e).

[6] Securities Exchange Act Release No. 22199 (July 1, 1985), 50 FR 28210 (July 11, 1985), 33 SEC Docket 898 (July 16, 1985) ("Proposing Release").

[7] 17 CFR 240.14e-1.

[8] Securities Exchange Act Release No. 22198 (July 1, 1985), 50 FR 27976 (July 9, 1985), 33 SEC Docket 894 (July 16, 1985) ("Release No. 34-22198").

[9] In Securities Exchange Act Release No. 22791 (January 14, 1986) ("Release 34-22791"), the Commission is reproposing an amendment to Rule 13e-4 and to proposed Rule 14d-10 that would require a tender offeror to pay to any security holder who tenders pursuant to the offer the highest consideration paid to any other security holder during the tender offer ("best price" provision). In the Proposing Release and Release 34-22198, the Commission proposed amendments to Rules 13e-4 and 14e-1 that would have required a tender offer to remain open for a minimum period of ten business days following an increase in the number of shares sought in the tender offer. The Commission is not adopting those amendments. Instead, in Release 34-22791, the Commission is proposing amendments to Rules 13e-4 and 14e-1 that would require a tender offeror to keep the tender offer open for a minimum period of ten business days after a decrease or an increase in the consideration offered or the percentage of shares sought in the offer. Companion amendments to Rules 13e-4 and 14d-7 are proposed to require an issuer or third party offeror to grant security holders additional withdrawal rights for the same minimum period after a decrease in the consideration offered or the percentage of shares sought in the tender offer.

[10] The letters of comment, as well as a copy of the summary of the comment letters prepared by the staff, are available for public inspection and copying at the Commission's Public Reference Room (*See* File No. S7-35-85).

[11] 17 CFR 240.14d-7, 240.14d-8, 240.14e-1.

[12] 17 CFR 240.13e-4(f)(1). The term "commencement" is defined in paragraph (a)(4) of the Rule as "the date an issuer tender offer is first published, sent or given to security holders."

[13] Issuer tender offers made "in anticipation of or in response to" third party offers will be referred to as "defensive issuer tender offers."

[14] 50 FR at 28211-12.

the Rule should be the same as those required by the third party rules to allow investors to make the kind of well-informed, unpressured investment decision that the Williams Act [15] and the Rule were designed to facilitate. In addition, the disparities in the offering periods for issuer, defensive issuer, and third party tender offers can create confusion for security holders, and may present the difficult factual question whether an issuer tender offer was made "in anticipation of or in response to" a third party offer.

To remedy these problems, under the amendments to Rules 13e–4 and 14e–1, all issuer tender offers will be required to remain open for a minimum period of 20 business days. In addition, paragraph (f)(1) of the Rule will require an issuer tender offer to remain open for a minimum period of ten business days following an increase in the consideration offered or the fee paid to a dealer to solicit security holders to tender their shares to the issuer.[16] These additional requirements will parallel what is currently required by Rule 14e–1(b) for third party offers and for defensive issuer tender offers. As more fully discussed in the Proposing Release,[17] the Commission believes that security holders need a minimum period of time in which to consider these increases since they represent material changes in the terms of the tender offer, and can increase the pressure on security holders to tender their shares to the issuer.[18]

The amendments will also remove the provisos from paragraphs (a) and (b) of Rule 14e–1, which make those paragraphs applicable only to defensive issuer tender offers. The amendments will therefore remove the troubling factual problem of determining whether an issuer tender offer was made "in anticipation of or in response to" a third party offer. As a result, all issuer tender offers, whether or not subject to Rule 13e–4, will be subject to the minimum offering periods specified by Rule 14e–1 (a) and (b).[19]

B. Withdrawal Periods

Currently, paragraph (f)(2) of the Rule [20] requires that an issuer afford security holders withdrawal rights for a minimum period of ten business days following the commencement of the issuer tender offer and, if securities have not yet been accepted for payment, for a minimum period of seven business days following the commencement of a tender offer by a third party for the same class of securities, and after 40 business days after the commencement of the issuer tender offer.

As the Commission stated more fully in the Proposing Release,[21] the purposes behind extending the minimum offering periods applicable to issuer tender offers to bring them into conformity with those applicable to third party offers apply with equal force in the context of the issuer's shorter withdrawal period. Therefore, the amendment extending the minimum withdrawal period from ten business days to 15 business days to match Rule 14d–7(a)(2)[22] governing the minimum withdrawal period in third party offers has been adopted as proposed.

Upon the commencement of a third party tender offer, a preceding third party offeror must grant security holders withdrawal rights for a minimum period of ten business days,[23] while a preceding issuer tender offeror must grant additional withdrawal rights for a minimum period of only seven business days.[24] The amendments to Rule 13e–4 extend the minimum seven business day period to ten business days. The amendments give security holders who have tendered to the issuer a reasonable amount of time in which to assess the new third party offer, and will eliminate any advantage that the shorter period may afford issuers over third parties.

Rule 14d–7(a)(2) requires a third party offeror to grant additional withdrawal rights as specified by that rule upon the commencement of another bidder's tender offer. Since Rule 14d–1(b)(1)[25] defines "bidder" as not including an issuer who makes a tender offer for its own securities, the commencement of an issuer tender offer does not trigger additional withdrawal rights in a preceding third party tender offer. Although some commentators suggested that the commencement of an issuer tender offer should trigger additional withdrawal rights in preceding third party offers for the issuer's securities, the Commission is not now proposing to amend Rule 14d–1(b)(1) in this respect. The Commission continues to believe that the possible abuses (such as defensive issuer tender offers for a *de minimis* number of shares, or highly conditional defensive issuer tender offers) outweigh any disadvantages presented by the difference in treatment.[26] In addition, the Commission notes that, unlike third parties, who must commence a tender offer within five business days of the public announcement of the offeror,[27] issuers are not required to commence an issuer tender offer within a specified period after announcing the offer. Therefore, an issuer contemplating a defensive issuer tender offer can announce its intention to make a tender offer at an early point within the initial withdrawal period in the third party tender offer even if the issuer is unable to commence the issuer tender offer until after the expiration of that period.[28] Security holders would not be

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[15] The Williams Act added new Sections 13(d), 13(e), 14(d), 14(e), and 14(f) to the Exchange Act, 15 U.S.C. 78m (d)–(e) and 78n (d)–(f).

[16] In Release 34–22791, as mentioned above, the Commission is proposing amendments to Rules 13e–4 and 14e–1 that would require a tender offer to remain open for a minimum period of ten business days following a decrease, as well as an increase, in the percentage of shares sought.

[17] 50 FR at 28214.

[18] The SEC Advisory Committee on Tender Offers ("Advisory Committee") recommended that "to further the goal of equal opportunity to participate in the offer the Committee recommends extension of the minimum offering period . . . in the event of an announcement of an increase in the . . . price for the shares." SEC Advisory Committee on Tender Offers, Report of Recommendations at 28 (1983) ("Advisory Committee Report"). The Commission agrees with the Advisory Committee's suggestion although the Commission has not followed the Advisory Committee's specific recommendation on this point. *Id.*, Recommendation 18 at 28.

The use of a uniformly applied, market-based formula to determine the price to be paid to a particular security holder is permitted in the context of issuer tender offers made in accordance with Rule 13e–4(g)(5) solely to security holders holding an aggregate of 99 or fewer shares ("odd-lot offer"). *See, e.g., Letter regarding Great American Industries, Inc.* (letter dated April 6, 1983). An increase in the consideration offered in an odd-lot offer that is due solely to fluctuations in the market prices used in such a formula will not trigger paragraph (b) of Rule 14e–1.

[19] The Commission is not proposing to except any issuer tender offers from Rule 14e–1. As a result, odd-lot offers and other issuer tender offers excepted from Rule 13e–4 will nevertheless be subject to Rule 14e–1. However, the minimum offering periods required by Rule 14e–1 should not place any significant burdens on issuers making tender offers that are excepted from Rule 13e–4.

Removing the provisos from paragraphs (a) and (b) of Rule 14e–1 would also result in Rule 14e–1 and Rule 13e–4 each specifying minimum offering periods for issuer tender offers. Some commentators suggested that such a result would be undesirable because it might suggest that there were differences between the minimum offering periods specified by Rule 14e–1 (a) and (b) and those specified by Rule 13e–4(f)(1). The Commission believes it is beneficial to have all the requirements for issuer tender offers set forth in one rule, and emphasizes that paragraph (f)(1) of Rule 13e–4 will be interpreted in the same manner as Rule 14e–1 (a) and (b).

[20] 17 CFR 240.13–4(f)(2).

[21] 50 FR 28211–2.

[22] 17 CFR 240.14d–7(a)(2). *See also* n.9 *supra.*

[23] 17 CFR 240.14d–7(a)(2).

[24] 17 CFR 240.13e–4(f)(2)(ii).

[25] 17 CFR 240.14d–1(b)(1).

[26] *See* Proposing Release, 50 FR at 28215 n.45, and Securities Exchange Act Release No. 16384 (November 29, 1979), 44 FR 70362 (December 6, 1979).

[27] Exchange Act Rule 14d–2(b), 17 CFR 240.14d–2(b).

[28] Moreover, Rule 14e–2 under the Exchange Act, 17 CFR 240.14e–2, requires the target company to

Continued

disadvantaged if they withdrew their shares from the third party offer in expectation of the issuer's defensive tender offer, since they could re-tender them to the third party if the issuer tender offer did not materialize or was not as attractive as the third party offer, and Rule 14d–8[29] requires a third party to purchase securities on a pro rata basis from among all securities tendered throughout the period that a partial tender offer remains open.[30]

C. Proration Periods

Paragraph (f)(3) of Rule 13e–4[31] requires an issuer to accept securities on a pro rata basis from among securities tendered during a minimum period of ten business days from the commencement of the issuer tender offer if the number of securities tendered during that period is greater than the number the issuer is willing to accept. Since the withdrawal period in issuer tender offers is also currently ten business days from commencement (prior to the amendment adopted today to increase the period to 15 business days), an issuer can purchase securities after ten business days.

In contrast, Rule 14d–8 requires a third party offeror, in a partial tender offer, to accept securities on a pro rata basis from among securities tendered throughout the period that the third party offer remains open. Since the minimum offering period required of third party offers by Rule 14e–1(a) is 20 business days, a third party offeror making a partial offer cannot purchase securities tendered to it for at least 20 business days.

In the Proposing Release, the Commission noted that the Advisory Committee believed that the issuer's shorter proration period caused security holders to lose the protections afforded by the minimum offering period, and, therefore by the minimum proration period, required of third party offers.[32] Since the issuer can purchase securities pursuant to the issuer offer before a competing third party offeror can purchase pursuant to the third party offer, security holders are pressured to tender quickly into the issuer's offer. Moreover, the third party bidder has very little time to consider changing its offer in response to the issuer tender offer. The Advisory Committee therefore recommended: "Once a third party tender offer has commenced, the target company should not be permitted to initiate a self tender with a proration date earlier than that of any tender offer commenced prior to the self-tender."[33]

The Commission agreed with the Advisory Committee, and in the Proposing Release proposed an amendment to Rule 13e–4(f)(3) that would require an issuer to accept tendered securities on a pro rata basis from among securities tendered throughout the period that the issuer tender offer remains open. Combined with the amendment requiring an issuer tender offer to remain open for a minimum period of 20 business days, an issuer would not be able to purchase shares pursuant to its offer for at least 20 business days after the commencement of the issuer tender offer.

Several commentators objected to the proposed prorationing amendment. They generally asserted that the effect of the amendment would be to shift the current advantage from the issuer to the third party bidder. They maintained that the Commission should either leave the proration period at ten business days, or, if necessary, amend the Rule so that the proration date in the issuer tender offer would be the same as the proration date in a preceding third party offer, as long as the issuer commenced its tender offer within ten business days of the commencement of the third party offer.

As discussed in the Proposing Release,[34] the Commission continues to believe that the expiration of the proration period represents a crucial point in the tender offer for security holders who might be foreclosed from participating in the tender offer at all if they fail to tender within the proration period. The requirement that the tender offer remain open for a minimum period after commencement or after material developments in the terms of the tender offer loses meaning if the termination of the proration period has occurred or is imminent.[35] In addition, the rules providing for additional withdrawal rights in ongoing offers upon the commencement of new offers are designed to give security holders the opportunity to evaluate all of their options before becoming committed to one particular offer. These additional withdrawal rights may also lose meaning if the proration period in the issuer tender offer has expired.

Finally, the Commission remains unconvinced that, in a contest among several parties for the securities of an issuer, the rules as amended would afford any offeror an advantage over any other offeror. A second tender offer is generally at a disadvantage vis a vis a preceding tender offer. On balance, the tender offer regulatory scheme does not place the issuer at any greater disadvantage than any third party offeror commencing a tender offer subsequent to an initial tender offer by a third party.[36] As a result, the Commission is adopting the amendment as proposed.[37]

III. Other Amendments

A. Definition of "Business Day"

The amendments also revise the definition of the term "business day" in Rule 13e–4(a)(3),[38] to conform it to the

announce its position regarding the third party offer within ten business days from the date that the third party offer is first published or sent or given to security holders.

[29] 17 CFR 240.14d–8.

[30] Rule 13e–4(f)(2)(iii), 17 CFR 240.13e–4(f)(2)(iii), provides that, if not yet accepted for payment, an issuer must allow security holders to withdraw tendered securities after 40 business days after the commencement of the issuer tender offer. Section 14(d)(5) of the Exchange Act, 15 U.S.C. 78n(d)(5), requires withdrawal rights in a third party offer to be reopened after 60 calendar days after the commencement of the third party offer. The Commission is not proposing to adjust these periods. The 40 business and 60 calendar day periods are substantially equivalent, and all the other time periods specified by Rule 13e–4 are stated in terms of business rather than calendar days. Moreover, these back-end withdrawal rights are rarely activated.

[31] 17 CFR 240.13e–4(f)(3).

[32] 50 FR at 28213; Advisory Committee Report at 41–42.

[33] Advisory Committee Report, Recommendation 39(b) at 42.

[34] 50 FR at 28213.

[35] Currently, the issuer is required to extend the proration period only upon an increase in the consideration offered. 17 CFR 240.13e–4(f)(3).

[36] In order to remain competitive, an initial third party bidder would have to adjust the terms of his offer in response to a subsequent issuer (or third party) offer that was considered to be superior to the initial offer. Such adjustments (*i.e.*, in consideration offered) would trigger additional time periods in the initial offer and would reduce or eliminate the advantages of having made the first offer.

[37] Two commentators suggested that the Commission lacks authority to require an issuer to accept securities on a pro rata basis throughout the issuer tender offer. The Commission believes that its authority to adopt this amendment is clear. Section 13(e)(1) of the Exchange Act, 15 U.S.C. 78m(e)(1), in addition to giving the Commission the authority to prescribe means reasonably designed to prevent fraudulent, deceptive, or manipulative acts and practices, specifically empowers the Commission to adopt rules and regulations requiring comprehensive disclosure by issuers making issuer tender offers and other issuer repurchases. *See Schreiber* v. *Burlington Northern, Inc.*, 105 S.Ct. 2458 (1985), where the Supreme Court said that Section 13(e) "grants broad regulatory power to the Securities and Exchange Commission to regulate such [issuer] repurchases." The proration period is intimately related to the meaningfulness of the disclosure that is required by Rule 13e–4. As discussed above, and in the release proposing an extension of the length of the proration period in third party offers, Securities Exchange Act Release No. 18761 (May 25, 1982), 47 FR 24338 (June 4, 1982), 25 SEC Docket 591 (June 8, 1982), the length of the proration period is just as important as the length of the offering period in assuring that security holders have adequate time in which to evaluate a tender offer.

[38] 17 CFR 240.13e–4(a)(3).

definition of that term in Rule 14d–1(b)(6).[39] The amendment reflects current interpretations by the Division of Market Regulation.

B. New Paragraph (f)(7)

New paragraph (f)(7), which mirrors Rule 14d–7(b),[40] provides that the time periods for the minimum offering and withdrawal rights periods shall be computed on a concurrent, as opposed to a consecutive, basis. The amendment furthers the Rule's objective of providing an adequate period of time for shareholder action following a significant development in an issuer tender offer, but will not necessarily require that the minimum offering or withdrawal rights period be extended if the additional specified time periods expire on or before the expiration of the original offering and withdrawal rights periods.[41]

IV. Final Regulatory Flexibility Analysis

This final regulatory flexibility analysis has been prepared in accordance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 604), and concerns the effects on small entities of the amendments to Rules 13e–4 and 14e–1 under the Exchange Act. The corresponding Initial Regulatory Flexibility Analysis is contained in the Proposing Release.

1. Reasons for the Amendments

Rule 13e–4 specifies certain minimum time periods applicable to issuer tender offers or exchange offers for their equity securities. These time periods are different from the minimum time periods required of third party tender offers by Regulations 14D and 14E under the Exchange Act. These differences complicate the calculation of time periods in competing tender offers and may confuse investors. In addition, the differences give issuers who make defensive issuer tender offers advantages over competing third party bidders.

Also, Rule 14e–1 under the Exchange Act specifies certain other time periods for issuer tender offers when made "in anticipation of or in response to" third party offers. The amendments to Rule 14e–1 eliminate the provisos that make paragraphs (a) and (b) applicable to issuer tender offers only when made "in anticipation of or in response to" third party offers. As a result, the amendments to Rule 14e–1 eliminate the difficult factual question whether an issuer tender offer was made in anticipation of or in response to a third party offer.

2. Issues Raised by Public Comment

No commentators referred to the Initial Regulatory Flexibility Analysis in commenting on the proposed timing amendments to Rules 13e–4 and 14e–1 in the Proposing Release. One commentator noted that the amendments to Rule 14e–1 would extend that rule's coverage to all issuer tender offers, not just defensive issuer tender offers, and wished to raise the question whether the benefits of such an extension outweighed the burdens that might be imposed on certain issuers. However, for the reasons stated in the Initial Regulatory Flexibility Analysis, the Commission continues to believe that the amendments will not have a significant economic impact on a substantial number of small entities as defined by Rule 0–10(a) under the Exchange Act.

3. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives to the proposals that would accomplish the stated objectives while minimizing any significant adverse economic impact on small entities. The Commission considered imposing fewer requirements on tender offers by small issuers, such as making the amendments applicable only to defensive issuer tender offers, or exempting affected small entities from Rules 13e–4 and 14e–1. The Commission also considered exempting from Rule 14e–1 any issuer tender offer exempt from Rule 13e–4. However, the Commission does not believe that such alternative proposals would be consistent with the fundamental policies of the Williams Act, including investor protection and full disclosure.

Lists of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities, Tender offers, Issuers.

V. Statutory Basis and Text of Amendments

Pursuant to section 3(b), 9(a)(6), 10(b), 13(e), 14(e) and 23(a) of the Act, 15 U.S.C. 78c(b), 78i(a)(6), 78j(b), 78m(e), 78n(e) and 78w(a), and 23(c) of the Investment Company Act of 1940, 15 U.S.C. 80a–23(c), the Commission amends § 240.13e–4 and § 240.14e–1 of Chapter II of Title 17 of the Code of Federal Regulations to read as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following cite:

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w, * * * §§ 240.13e–4 to 240.13e–101 also issued under secs. 3(b), 9(a)(6), 10(b), 13(e), 14(e), 15(c)(1), 48 Stat. 882, 889, 891, 894, 895, 901, sec. 8, 49 Stat. 1379, sec. 5, 78 Stat. 569, 570, secs. 2, 3, 82 Stat. 454, 455, secs. 1, 2, 3–5, 84 Stat. 1497, secs. 3, 18, 89 Stat. 97, 155; 15 U.S.C. 78c(b), 78i(a)(6), 78j(b), 78m(e), 78n(e), 78o(c); sec. 23(c) of the Investment Company Act of 1940; 54 Stat. 825; 15 U.S.C. 80a–23(c).

2. By revising paragraphs (a)(3), (f)(1), (f)(2), (f)(2)(i), (f)(2)(ii), (f)(3) introductory text, and by adding new paragraph (f)(7), of § 240.13e–4, to read as follows:

§ 240.13e–4 Tender offers by issuers.

(a) * * *

(3) As used in this section and in Schedule 13E–4 [§ 240.13e–101], the term "business day" means any day, other than Saturday, Sunday, or a federal holiday, and shall consist of the time period from 12:01 a.m. through 12:00 midnight Eastern Time. In computing any time period under this Rule or Schedule 13E–4, the date of the event that begins the running of such time period shall be included *except that* if such event occurs on other than a business day such period shall begin to run on and shall include the first business day thereafter.

* * * * *

(f) * * *

(1) The issuer tender offer, unless withdrawn, shall remain open until the expiration of:

(i) at least twenty business days from its commencement; and

(ii) at least ten business days from the date that notice of an increase in the consideration offered or the dealer's soliciting fee to be given is first published, sent or given to security holders.

(2) The issuer or affiliate making the issuer tender offer shall permit securities tendered pursuant to the issuer tender offer to be withdrawn:

(i) at any time until the expiration of fifteen business days from the commencement of the issuer tender offer; and

(ii) if not yet accepted for payment, on the date and until the expiration of ten business days following the date of commencement of another bidder's tender offer other than pursuant to Rule 14d–2(b) [§ 240.14d–2(b)] for securities of the same class;

* * * * *

[39] 17 CFR 240.14d–1(b)(6).

[40] 17 CFR 240.14d–7(b).

[41] The amended Rules 13e–4 and 14e–1 apply to all issuer tender offers commenced on or after March 1, 1986.

(3) If the issuer or affiliate makes a tender offer for less than all of the outstanding equity securities of a class, and if a greater number of securities is tendered pursuant thereto than the issuer or affiliate is bound or willing to take up and pay for, the securities taken up and paid for shall be taken up and paid for as nearly as may be pro rata, disregarding fractions, according to the number of securities tendered by each security holder during the period such offer remains open; *Provided, however,* That this provision shall not prohibit the issuer or affiliate making the issuer tender offer from:

* * * * *

(7) The time periods for the minimum offering periods and withdrawal rights pursuant to this section shall be computed on a concurrent, as opposed to a consecutive, basis.

* * * * *

3. By revising paragraphs (a) and (b) of § 240.14e–1 as follows:

§ 240.14e–1 Unlawful tender offer practices.

* * * * *

(a) Hold such tender offer open for less than twenty business days from the date such tender offer is first published or sent or given to security holders;

(b) Increase the consideration offered or the dealer's soliciting fee to be given in a tender offer unless such tender offer remains open for at least ten business days from the date that notice of such increase is first published or sent or given to security holders;

* * * * *

By the Commission.

January 14, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–1452 Filed 1–22–86, 8:45 am]

BILLING CODE 8010–01–M

RAILROAD RETIREMENT BOARD

20 CFR Parts 234, 237, and 238

Annuities; Lump-Sum Payments

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board [Board] hereby amends its regulations covering the lump-sum death payment, annuities due but unpaid at death, the residual lump-sum payment, and the lump-sum refund payment. The lump-sum refund payment was not previously described in the Board's regulations. Regulations concerning the other subjects are contained in several sections of the Board's regulations. The amendments reorganize the rules concerning these subjects into one part that should make them easier to use and understand. In addition, these rules contain provisions implementing amendments to the Railroad Retirement Act [Act] not documented in current regulations.

EFFECTIVE DATE: January 23, 1986.

FOR FURTHER INFORMATION CONTACT: Joseph Drantz, Methods and Procedures, Bureau of Retirement Claims, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4710 (FTS 387–4710).

SUPPLEMENTARY INFORMATION: The Board published this rule as a proposed rule on October 28, 1985 and invited public comment (50 FR 43575–43581). No comments were received by the Board on the proposed rule.

The Board's regulations concerning lump-sum payments were issued under the Railroad Retirement Act of 1937 and are, in certain respects, obsolete. The amended Part 234 contains the descriptions of and eligibility requirements for the various types of lump-sum payments provided under sections 6(a)(1) through 6(d)(2) of the Railroad Retirement Act of 1974, as amended through 1983. In addition, amended Part 234 has been written in plain English and the information concerning the various types of lump-sum payments, which is currently spread over the three Parts 234, 237 and 238, has been consolidated under a single part to make the amended regulations easier to use and understand.

Amended Part 234 is divided into the six Subparts A through F:

Amended Subpart A, General (§§ 234.1 and 234.2), clearly and simply defines certain terms regarding lump-sum payments as they are used in amended Part 234. Current regulations fail either to define some of the terms or to define the terms as they specifically relate to lump-sum payments.

The *amended Subpart B, Lump-Sum Death Payment* (§§ 234.10 through 234.21), replaces the current Subpart E, Lump-Sum Death Payments, (§§ 237.501 through 237.504) of the current Part 237. Amended Subpart B discusses the lump-sum death payment under the 1974 Act as revised by the 1981 Railroad Retirement Act amendments. The new sections detail the two different types of lump-sum payments which are currently payable: the 1937 Act lump-sum death payment and the 1974 Act lump-sum death payment. The current regulations were issued under the Railroad Retirement Act of 1937 and are obsolete in that they do not detail payment of the 1974 Act lump-sum death payment.

The Board revises the current Part 234, Annuities Due But Unpaid At Death, with the entirely *new Subpart C, Annuities Due But Unpaid At Death* (§§ 234.30 through 234.34). New Subpart C describes the order and amount of payment for regular employee retirement and supplemental annuities, spouse or divorced spouse annuities and survivor annuities which are due but unpaid at the death of an applicant or annuitant. The new Subpart C also details who is payable when an entitled relative of the deceased railroad employee dies before receiving payment of a due but unpaid annuity. The current regulations were issued under the Railroad Retirement Act of 1937 and are, in certain respects, obsolete.

The *new Subpart D, Residual Lump-Sum Payment* (§§234.40 through 234.48), replaces the current Part 238, Residual Lump-Sum Payments. New Subpart D describes the order and amount of payment for the residual lump-sum payment. The current regulations were issued under the Railroad Retirement Act of 1937 and are, in various ways, obsolete.

Subpart E, Lump-Sum Refund Payment (§§ 234.50 through 234.53), is totally new. There is no similar discussion under current regulations. The new Subpart E is necessary to document the lump-sum refund payment which is a benefit payable under the 1974 Act. The new Subpart E explains in a simple straightforward manner when and to whom a lump-sum refund payment can be made.

The *new Subpart F, Miscellaneous* (§§ 234.60 through 234.62), discusses escheat, assignment of interest by an eligible person and the effect of felonious homicide on entitlement as they relate to lump-sum payments under the Railroad Retirement Act of 1974. New § 234.60, Escheat, of the new Subpart F replaces § 234.6, Escheat, of the current regulations. The discussions on the assignment of interest by an eligible person in new § 234.61 and the effect of felonious homicide on entitlement in new § 234.62 are included to make the amended Part 234 complete.

In addition, the Board amends the current Subpart B, Basic Computation, of the current Part 237, Insurance Annuities And Lump Sum For Survivors, by removing §§ 237.201 through 237.205. The computations discussed in the current Subpart B of the current Part 237 are obsolete in that they were written under the Railroad Retirement Act of 1937; and they do not reflect the basic computations for either survivor annuities or lump-sum payments under the 1977 Act. Removal of those sections

will prevent confusion and misunderstanding. Computations basic to any lump-sum payments have been documented in the new Part 234.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required. The information collections associated with this rule have been approved by the Office of Management and Budget.

In order to enable users to check the completeness, accuracy and reasoning behind these proposed revisions to the regulations, Derivation and Distribution Tables follow:

DERIVATION TABLE

New section and name	Current section and name
Part 234—Lump-Sum Payments.	
Subpart A—General	
234.1 Introduction.—New	
234.2 Definitions.—New	
Subpart B—Lump-Sum Death Payment	
234.10 General	237.501—Statutory provisions.
234.11 1974 Act lump-sum death payment:	
(a) New	
(b) New	
234.12 1937 Act lump-sum death payment.	237.502—Lump-sum death payments.
234.13 Payment to a funeral home—New.	
234.14 Payment to an equitably entitled person.	237.502(b)(2) Lump-sum death payments.—Persons equitably entitled.
234.15 When an employee's estate is entitled.	237.502(b)(2) Lump-sum death payments.—Persons equitably entitled.
234.16 When a widow(er) is eligible as an equitably entitled person.	237.502(b)(2) Lump-sum death payments.—Persons equitably entitled.
234.17 When an equitably entitled person's estate is payable.	237.502(b)(2) Lump-sum death payments.—Persons equitably entitled.
234.18 Payment of a deferred lump-sum to a widow(er).	237.503 Payment when lump sum exceeds insurance annuities accrued.
234.19 Effect of payment on future entitlement.	237.502(d) Lump-sum death payments.—Effect on later entitlement.
234.20 Computation of the employee's 1937 Act LSDP basic amount— New.	
234.21 Definition of "living with" and "living in the same house-hold."—New.	
Subpart C—Annuities Due but Unpaid at Death	
234.30 General.—New	
234.31 Regular employee retirement and supplemental annuities.	234.1 Employee annuities due but unpaid at death.
234.32 Spouse or divorced spouse annuities.	234.2 Spouse annuities due but unpaid at death.
234.33 Survivor annuities	234.3 Insurance annuities due but unpaid at death.
234.34 When an entitled relative of the employee dies before receiving payment of a due but unpaid annuity.—New.	
Subpart D—Residual Lump-Sum Payment	
234.40 General	238.1 Statutory provisions.
234.41 Persons to whom an RLS is payable.	238.2 Residual lump-sum payments.

DERIVATION TABLE—Continued

New section and name	Current section and name
234.42 How the employee may designate beneficiaries.	238.3 Designation of beneficiary.
234.43 Payment to designated beneficiaries.	238.2(b)(1) Residual lump-sum payments.—Designated beneficiary.
234.44 Payment to surviving relatives.	238.2(b)(2) Residual lump-sum payments.—Surviving relatives.
234.45 Payment to the employee's estate.	238.2(b)(3) Residual lump-sum payments.—Estate.
234.46 Amount of the RLS payabl.e—New.	
234.47 Election of the RLS by a widow(er) or parent.	238.4 Election to have residual lump-sum payment awarded.
234.48 Computation of the gross RLS amount.	238.2(c) Residual lump-sum payments.—Amount of payment.
Subpart E—Lump-Sum Refund Payment	
234.50 General.—New	
234.51 Persons to whom a lump-sum refund payment is payable.—New.	
234.52 Effect of the lump-sum refund payment on other benefits.—New.	
234.53 Computation of the lump-sum refund payment.—New.	
Subpart F—Miscellaneous	
234.60 Escheat	234.6 Escheat.
234.61 Assignment of interest by an eligible person.—New.	
234.62 Effect of felonious homicide on entitlement.—New.	

DISTRIBUTION TABLE

Current section and name	New section and name
234.1 Employee annuities due but unpaid at death.	234.31 Regular employee retirement and supplemental annuities.
234.2 Spouse annuities due but unpaid at death.	234.32 Spouse or divorced spouse annuities.
234.3 Insurance annuities due but unpaid at death.	234.33 Survivor annuities.
234.4 Joint and survivor annuities due but unpaid at death.	Obsolete.
234.5 Time of filing application.	234.30 General.
234.6 Escheat	234.60 Escheat.
237.201 Statutory provisions.	Obsolete.
237.202 Basic amount	Obsolete.
237.203 Average monthly remuneration.	Obsolete.
237.204 Closing date	Obsolete.
237.205 Reduction because of military service used for other benefits.	Obsolete.
237.501 Statutory provisions.	234.10 General.
237.502 Lump-sum death payments.	234.12 1937 Act lump-sum death payment; 234.13 Payment to a funeral home; 234.14 Payment to an equitably entitled person; 234.15 When an employee's estate is entitled; 234.16 When a widow(er) is eligible as an equitably entitled person; 234.17 When an equitably entitled person's estate is payable.
237.502 Payment when lump-sum exceeds insurance annuities accrued.	234.18 Payment of a deferred lump-sum to a widow(er).
237.504 Meaning of terms	Unnecessary.

DISTRIBUTION TABLE—Continued

Current section and name	New section and name
238.1 Statutory provisions	234.40 General; 234.48 Computation of the gross RLS amount.
238.2 Residual lump-sum payments.	234.41 Persons to whom an RLS is payable; 234.43 Payment to designated beneficiaries; 234.44 Payment to surviving relatives; 234.45 Payment to the employee's estate; 234.46 Amount of the RLS payable; 234.48 Computation of the gross RLS amount.
238.3 Designation of beneficiary.	234.42 How the employee may designate beneficiaries.
238.4 Election to have residual lump-sum payment awarded.	234.47 Election of the RLS by a widow(er) or parent.
238.5 [Reserved].	
238.6 Meaning of "combined credits.".	Unnecessary.
238.7 Act of March 7, 1942	Obsolete.
238.8 Payment of residual lump-sum when Social Security Act lump-sum is unpaid.	234.46 Amount of the RLS payable.

List of Subjects in 20 CFR Parts 234, 237, and 238

Railroad employees, Railroad retirement, Railroads.

For the reasons set out in the preamble, Chapter II of Title 20 of the Code of Federal Regulations is amended as follows:

1. Part 234, *Annuities Due but Unpaid at Death,* is revised to read as follows:

PART 234—LUMP-SUM PAYMENTS

Subpart A—General

Sec.
234.1 Introduction.
234.2 Definitions.

Subpart B—Lump-Sum Death Payment

234.10 General.
234.11 1974 Act lump-sum death payment.
234.12 1937 Act lump-sum death payment.
234.13 Payment to a funeral home.
234.14 Payment to an equitably entitled person.
234.15 When an employee's estate is entitled.
234.16 When a widow(er) is eligible as an equitably entitled person.
234.17 When an equitably entitled person's estate is payable.
234.18 Payment of a deferred lump-sum to a widow(er).
234.19 Effect of payment on future entitlement.
234.20 Computation of the employee's 1937 Act LSDP basic amount.
234.21 Definitions of "living with" and "living in the same household."

Subpart C—Annuities Due but Unpaid at Death

234.30 General.
234.31 Regular employee retirement and supplemental annuities.
234.32 Spouse or divorced spouse annuities.

Authority: 45 U.S.C. 231f.

Subpart A—General

§ 234.1 Introduction.

This part contains information about the various lump-sum payments payable under sections 6(a)(1) through 6(d)(2) of the 1974 Act.

§ 234.2 Definitions.

As used in this part:

"Applicant" means the person who signs an application for an annuity or lump-sum of himself, herself or for some other person.

"Apply" means to sign a form or statement that the Board accepts as an application.

"Burial expenses" means expenses in connection with the actual burial or other disposition of the remains of the deceased employee.

"Eligible" means a person meets all the requirements for payment of an annuity or a lump-sum, but has not yet applied.

"Employee" means any person who is working or has worked for a railroad employer.

"Entitled" means a person who meets all the requirements for an annuity or a lump-sum, and has applied.

"Equitably entitled person" means the person whose funds were used to pay the burial expenses of a deceased employee.

"Lump-sum" means any non-recurring payment due because of an employee's or death beneficiary's death.

"Person" means an individual, partnership, trust estate, association, corporation, government unit, or estate of a deceased individual.

"Reimbursable burial expenses" means that part of the burial expenses not previously reimbursed by another federal agency.

Subpart B—Lump-Sum Death Payment

§ 234.10 General.

A lump-sum death payment (LSDP) is payable when an employee with ten or more years of railroad service and a current connection with the railroad industry dies and is not survived by an individual who is eligible for a monthly annuity in the month the employee died. The amount of the LSDP and the priority for payment depend upon when the employee acquired his or her 120th month of railroad service. If the employee acquired the 120th month of railroad service after 1974, a 1974 Act lump-sum death payment is payable to the employee's widow(er). If the employee acquired the 120th month of railroad service before 1975, a 1937 Act lump-sum death payment is payable to the employee's widow(er), the funeral home or the payer of the employee's burial expenses. An application for an LSDP must be filed within two years after the employee's death.

§ 234.11 1974 Act lump-sum death payment.

(a) The total amount of the 1974 Act LSDP is payable to the employee's widow(er), if she or he was "living in the same household" as the employee at the time of the employee's death. (Refer to § 234.21 for an explanation of "living in the same household.")

(b) The amount of the 1974 Act LSDP is equal to three times the amount of the PIA, as determined by section 215 of the Social Security Act, or $255.00, whichever is less.

§ 234.12 1937 Act lump-sum death payment.

(a) The 1937 Act LSDP is payable in the following order and amounts:

(1) The employee's "living with" widow(er) is paid the total amount of the LSDP. (Refer to § 234.21 for an explanation of "living with.")

(2) A funeral home, which has unpaid expenses, is paid the amount of the unpaid expenses or the total amount of the LSDP, whichever is less.

(3) An equitably entitled person is paid the total amount of the LSDP or a proportionate share of the LSDP, depending upon the amount of burial expenses he or she paid.

(b) The 1937 Act LSDP is equal to ten times the basic amount. (Refer to § 234.20 for an explanation of the computation of the employee's basic amount.)

§ 234.13 Payment to a funeral home.

The 1937 Act LSDP is paid to a funeral home under the following conditions:

(a) A person who has assumed responsibility for all or part of the burial expenses files an application authorizing payment to the funeral home. Usually, the Board considers the person who makes the arrangements with the funeral home or makes a voluntary payment to the funeral home to be the person who has assumed responsibility for the burial expenses.

(b) An official of the funeral home with unpaid expenses files an application on behalf of the funeral home after 90 days have elapsed from the date of the employee's death, if during that 90-day period no one has assumed responsibility for the payment of the burial expenses.

(Approved by the Office of Management and Budget under Control No. 3220–0031)

§ 234.14 Payment to an equitably entitled person.

(a) An equitably entitled person's funds used to pay burial expenses may consist of:

(1) The individual's own money;

(2) Money in a joint account with the employee or another individual;

(3) Money paid to an individual who was named beneficiary to receive the money;

(4) A promissory note; or

(5) Money which several people placed into a pooled fund.

(b) Payment is made to equitably entitled persons in the following order:

(1) The person who paid the funeral home expenses;

(2) The person who paid the grave opening and closing expenses;

(3) The person who provided the burial plot; and

(4) The person who paid any type of expenses not listed in paragraph (b) (1) through (3) of this section.

§ 234.15 When an employee's estate is entitled.

(a) The employee's estate is considered an equitably entitled person if the funds used to pay burial expenses consisted of:

(1) Money in the employee's single-ownership bank account;

(2) Money paid directly to the funeral home by the employee before death;

(3) Money paid by the employee under a contract, plan, system or general practice where no beneficiary was named to receive the money;

(4) Money found among the employee's effects;

(5) Unpaid salary due the employee by the employee's employer;

(6) Money obtained by selling the employee's real or personal property; or

(7) Money from a trust fund.

(b) If the employee's estate is the equitably entitled person, the Board will pay the LSDP to the legal representative of the employee's estate. When no legal representative of the employee's estate has been or is expected to be appointed, the Board will pay the LSDP according to state statutory procedures applicable when no formal probate or administration occurs.

§ 234.16 When a widow(er) is eligible as an equitably entitled person.

When a widow(er) files for an LSDP and the "living with" requirement (described in § 234.21) is not met, the widow(er) could be paid as an equitably entitled person.

§ 234.17 When an equitably entitled person's estate is payable.

When an equitably entitled person dies before negotiating the LSDP check, that person's share is payable to his or her estate.

§ 234.18 Payment of a deferred lump-sum to a widow(er).

In certain cases, a deferred LSDP may be payable to the employee's widow(er), even if someone may be entitled to a monthly annuity in the month of the employee's death. A deferred LSDP is the difference between the amount of the LSDP and the total of the monthly survivor annuities paid during the 12-month period which begins in the month of the employee's death.

§ 234.19 Effect of payment on future entitlement.

Payment of an LSDP does not affect the entitlement of survivors to monthly annuities at a later date.

§ 234.20 Computation of the employee's 1937 Act LSDP basic amount.

(a) *Definition of terms used in this section:*

"Average monthly remuneration (AMR)" means the amount obtained by adding together the creditable compensation and wages earned by the employee after 1936 and before the LSDP closing date and dividing that sum by three times the number of calendar quarters in that period. (Refer to Part 211 of this chapter for a definition of creditable compensation and Section 209 of the Social Security Act for a definition of creditable wages.)

"Closing date" means whichever of the following produce the highest AMR:

(1) The first day of the calendar year in which the employee both attained age 65 and was completely insured;

(2) The first day of the calendar year in which the employee died; or

(3) The first day of the calendar year following the year in which the employee died;

(4) However, if paragraphs (1) through (3) of this definition do not occur before January 1, 1975, the closing date is January 1, 1975.

(b) *LSDP basic amount formula.* The basic amount is computed using the following formula:

(1) Determine 52.4% of the AMR up to and including $75.00;

(2) Determine 12.8% of the AMR exceeding $75.00;

(3) Determine 1% of the sum of paragraphs (b) (1) and (2) of this section;

(4) Multiply the result of paragraph (b)(3) of this section by the number of years after 1936 through 1974 in which employees earned $200 or more;

(5) Add the results of paragraphs (b) (1), (2) and (3) of this section. If the resulting basic amount is less than $18.14, increase it to $18.14.

§ 234.21 Definitions of "living with" and "living in the same household."

(a) *"Living with."* A widow(er) is considered "living with" the employee at the time of the employee's death, if one of the following conditions applies:

(1) the employee and spouse were members of the same household;

(2) the spouse was receiving regular contributions for support from the employee; or

(3) the employee was under court order to contribute to the spouse's support.

(b)(1) *"Living in the same household."* An employee and spouse were "living in the same household" if they lived together as a married couple in the same residence. However, an employee and spouse, who were temporarily living apart, will be considered "living in the same household" if there was intent to share the same residence had the employee not died. The Board will usually assume that a married couple was living apart temporarily, if the separation was caused by circumstances beyond their control, for example, ill health, financial difficulties, service with the Armed Forces, or confinement in a curative, custodial, or penal institution.

(2) If the employee and spouse were separated solely for medical reasons, the Board will consider them "living in the same household," even if the separation was likely to be permanent.

Subpart C—Annuities Due but Unpaid at Death

§ 234.30 General.

When an applicant or an annuitant dies before being paid any annuities that may be due, the total of those annuities become payable to certain survivors in a lump-sum. Refer to § 234.31 through § 234.34 for information about when and to whom each type of unpaid annuity is payable. An application for an unpaid annuity must be filed within two years after the death of the person originally entitled to the annuity.

(Approved by the Office of Management and Budget under Control Nos. 3220–0031 and 3220–0042)

§ 234.31 Regular employee retirement and supplemental annuities.

A regular employee retirement annuity or a supplemental annuity which is unpaid at the death of the employee is payable in the following order and amounts:

(a) A surviving spouse, who was "living with" (see § 234.21) the employee at the time of the employee's death, receives the full amount of the unpaid annuity.

(b) Each person who paid the employee's burial expenses receives a share of the unpaid annuities in the same proportion that he or she paid the burial expenses, but only to the extent that he or she is not reimbursed by the LSDP. If a payer of the employee's burial expenses dies before negotiating his or her check, that payment becomes payable to his or her estate.

(c) Surviving children of the employee receive equal shares.

(d) Surviving grandchildren of the employee receive equal shares.

(e) Surviving parents of the employee each receive equal shares.

(f) Surviving brothers and sisters of the employee receive equal shares. Half blood brothers and sisters share equally with full blood brothers and sisters.

§ 234.32 Spouse or divorced spouse annuities.

A spouse annuity or divorced spouse annuity which is unpaid at the death of the spouse or divorced spouse is paid in the following order and amounts:

(a) The employee receives the full amount.

(b) If the employee died before negotiating the check in payment of the unpaid annuities, the unpaid spouse annuity or divorced spouse annuity is paid in the same order and amounts as described in § 234.31 (b) through (f).

§ 234.33 Survivor annuities.

Any survivor annuity which is unpaid at the death of the survivor is paid in the same order and amounts as described in § 234.31(a) and § 234.31(c) through § 234.31(f).

§ 234.34 When an entitled relative of the employee dies before receiving payment of a due but unpaid utility.

If a person, who is entitled to unpaid annuities based upon his or her relationship to the employee, dies before negotiating the check in payment of the unpaid annuities, the amount to which he or she was entitled becomes payable to other relatives of the employee in the same degree of relationship. If no relatives in that degree of relationship survive, the amount becomes payable to relatives in the next degree of relationship.

Subpart D—Residual Lump-Sum Payment

§234.40 General.

The residual lump-sum (RLS) is the means by which railroad employees and their survivors are guaranteed to receive at least as much in benefits as the employee paid in railroad retirement taxes during the years 1937 through 1974. An RLS payment can be made only if it appears that no other benefits based at least in part on railroad service will be payable under either the Railroad Retirement Act or Social Security Act in the future. The residual is reduced for any retirement benefits that were paid on the basis of the employee's railroad service, and for any survivor benefits based on the employee's earnings already paid by either the Board or the Social Security Administration. A widow(er) or dependent parent can, before attaining age 60, elect to waive future rights to monthly benefits based on the employee's railroad service in order to receive the RLS.

§ 234.41 Persons to whom an RLS is payable.

After the death of an employee, the RLS is payable, in the following order, to: beneficiaries designated by the employee; surviving relatives of the employee in order provided by law (see § 234.44); or the employee's estate.

§ 234.42 How the employee may designate beneficiaries.

The employee may designate one or more persons as beneficiaries of the RLS on a form available at any Board office. The employee may specify the share that each beneficiary is to receive. Also, the employee may designate alternate beneficiaries in the event that all primary beneficiaries die before the RLS becomes payable.

(Approved by the Office of Mangement and Budget under Control No. 3220–0031)

§ 234.43 Payment to designated beneficiaries.

(a) *How designated beneficiaries are paid.* Primary beneficiaries are paid the RLS to the exclusion of alternate beneficiaries. If a designated beneficiary dies before the date on which the RLS becomes payable, his or her share of the RLS becomes payable to any other designated beneficiaries. If an entitled designated beneficiary dies before negotiating the RLS check, that share is payable to his or her estate.

(b) *Amount designated beneficiaries are paid.* If the employee specified the share that each beneficiary is to receive, payment is made in the proportion specified. Otherwise, if there is more than one designated beneficiary, each is paid an equal share of the RLS.

§ 234.44 Payment to surviving relatives.

(a) *How surviving relatives are paid.* If the employee either did not designate a beneficiary or was not survived by a designated beneficiary, the RLS is payable to surviving relatives of the employee in the following order of relationship to the employee:

(1) Widow(er) who was "living with" the employee at the time of the employee's death (see § 234.21 for a definition of "living with");

(2) Child;

(3) Grandchild;

(4) Parent;

(5) Brother or sister, including half blood brother or sister.

(b) *Amount surviving relatives are paid.* If more than one relative in an equal degree of relationship survives the employee, each one is paid an equal share of the RLS. If an entitled relative of the employee dies before negotiating the RLS check, that share becomes payable to other surviving relatives of the employee in the same degree of relationship. If no relatives in that degree of relationship survive, relatives in the next degree of relationship are payable.

§ 234.45 Payment to the employee's estate.

(a) *When the employee's estate is paid.* If no designated beneficiaries or relatives survive the employee when the RLS becomes payable, the employee's estate may be paid the RLS. Employees may also designate their estates to receive all or a share of the RLS as beneficiaries.

(b) *How the employee's estate is paid.* If a legal representative of the employee's estate has been appointed and has not been discharged, the Board will pay the RLS to the legal representative. When no legal representative of the employee's estate has been or is expected to be appointed, or the estate of the deceased employee has been closed and reopening is not expected, the Board will pay the RLS according to state statutory procedures applicable when no formal probate or administration occurs.

§ 234.46 Amount of the RLS payable.

The gross RLS amount is equal to certain percentages of the employee's creditable compensation, including military service, as described in section § 234.48. (Creditable compensation and military service are discussed in Parts 211 and 212 of this chapter, respectively.) The amount of the RLS payable is equal to the gross RLS minus the sum of all retirement benefits that have been paid on the basis of the employee's railroad service and all survivor benefits based on the employee's earnings previously paid by either the Board or the Social Security Administration.

§ 234.47 Election of the RLS by a widow(er) or parent.

(a) An RLS cannot be paid if it appears that there are immediate or future monthly survivor benefits payable to anyone other than a widow(er) or parent. A widow(er) or parent can elect to have the RLS paid in lieu of future monthly benefits based on the employee's railroad earnings under either the Railroad Retirement Act or Social Security Act.

(b) *When an election must be filed.* An election to have the RLS paid must be filed before the widow(er) or parent attains age 60 if he or she would be entitled to benefits under the Railroad Retirement Act, or before the age of eligibility if he or she would be entitled to future benefits under the Social Security Act instead of the Railroad Retirement Act.

(c) *Filing an election.* An election to have the RLS paid must be made on the certification provided by the Board for that purpose, and must contain an irrevocable election to have the RLS paid in lieu of all benefits based on the employee's railroad service to which the widow(er) or parent might otherwise become entitled. Once the RLS check is negotiated, the election cannot be revoked.

§ 234.48 Computation of the gross RLS amount.

The amount of the gross RLS is equal to the percentages of the employee's

creditable compensation shown in Table I. However, compensation may only be credited up to the maximum amounts shown in Table II.

(a) *Percentages of the employee's creditable compensation and the periods to which those percentages apply:*

TABLE I

Percent	Period
4	Jan. 1, 1937 through December 1946.
7	Jan. 1, 1947 through December 1958.
7.5	Jan. 1, 1959 through December 1961.
8	Jan. 1, 1962 through December 1965.
8.1	Jan. 1, 1966 through December 1966.
8.65	Jan. 1, 1967 through December 1967.
8.8	Jan. 1, 1968 through December 1968.
9.45	Jan. 1, 1969 through December 1970.
9.85	Jan. 1, 1971 through December 1972.
10.1	Jan. 1, 1973 through September 1973.
5.35	Oct. 1, 1973 through December 1973.
5.45	Jan. 1, 1974 through December 1974.

(b) *Maximum compensation which may be credited per month:*

TABLE II

Compensation per Month	Period
$300	Jan. 1, 1937 through June 1954.
$350	July 1, 1954 through May 1959.
$400	June 1, 1959 through October 1963.
$450	Nov. 1, 1963 through December 1965.
$550	Jan. 1, 1966 through December 1967.
$650	Jan. 1, 1968 through December 1971.
$750	Jan. 1, 1972 through December 1972.
$900	Jan. 1, 1973 through December 1973.
$1,100	Jan. 1, 1974 through December 1974.

Subpart E—Lump-Sum Refund Payment

§ 234.50 General.

Under the 1974 Act, railroad employees with 10 or more years of railroad service, who are not entitled to a vested dual benefit payment, may be eligible for a lump-sum refund payment if they had concurrent railroad and social security earnings within the period 1951 through 1974. The combined earnings from the railroad retirement and social security systems in any of those years must exceed the maximums given in § 234.53. The lump-sum refund is payable to either the employee or the employee's survivors.

§ 234.51 Persons to whom a lump-sum refund payment is payable.

Employees receive their lump-sum refund payment from the Board, without applying for it, at the time their regular annuity is awarded. If an employee dies without receiving payment of a regular annuity, the lump-sum refund payment is payable to the employee's survivors in the same order of priority as shown for the RLS in § 234.44.

§ 234.52 Effect of payment on other benefits.

The lump-sum refund payment is deductible from the RLS; however, it has no effect on the payment of other benefits.

§ 234.53 Computation of the lump-sum refund payment.

(a) *The lump-sum refund payment is calculated as follows:*

(1) Combine the railroad employee's creditable earnings, including military service, under the Social Security Act and Railroad Retirement Act for each of the years 1951 through 1974;

(2) Determine the amount of the employee's creditable earnings in excess of the amounts for each year shown in the chart in paragraph (b) of this section;

(3) Multiply the results of paragraph (a)(2) of this section by the percentage shown in the chart in paragraph (b) of this section; and

(4) Add the results of paragraph (a)(3) of this section. The total is the amount of the lump-sum refund payment.

(b) *Chart for calculation of lump-sum refund payment.*

Year	Amount	Percentage
1951–53	$3,600	1.5
1954–56	4,200	2.0
1957–58	4,200	2.25
1959	4,800	2.5
1960–61	4,800	3.0
1962	4,800	3.125
1963–65	5,400	3.625
1966	6,600	4.2
1967	6,600	4.4
1968	7,800	3.3
1969–70	7,800	4.2
1971	7,800	4.6
1972	9,000	4.6
1973	10,800	4.85
1974	13,200	4.95

Subpart F—Miscellaneous

§ 234.60 Escheat.

Any payment under this Part which would be payable to any state, political subdivision of a state, the U.S. government or a foreign government because of the lack of a legal heir, shall remain in the Railroad Retirement Account.

§ 234.61 Assignment of interest by an eligible person.

(a) Any person who is eligible to receive a share of a lump-sum payment may assign his or her share to another eligible applicant, provided the share is not more than $500.

(b) If an LSDP or accrued annuity is payable, the request that a share be assigned must be received at a Board office no later than two years after the death of the employee or the originally entitled person.

(Approved by the Office of Management and Budget under Control No. 3220–0031)

§ 234.62 Effect of conviction of a felony on entitlement.

A person who has been convicted of a felony or an act in the nature of a felony of intentionally causing the employee's death shall not be entitled to any benefits under the Railroad Retirement Act. If a charge of felony is pending against an applicant for a lump-sum payment, the Board will make no payment until the applicant submits proof that the charge has been withdrawn, that no further action will be taken on the charge, or that he or she has been cleared of the charge.

PART 237—[AMENDED]

2. Part 237 is amended as follows:

A. The authority citation for Part 237 is revised to read as follows:

Authority: 45 U.S.C. 231f.

Subpart B—[Removed and reserved]

B. Part 237 is amended by revising the Part heading to read "Part 237—Insurance annuities for survivors", and by removing and reserving Subpart B—Basic Computations consisting of §§ 237.201 through 237.205.

PART 238—RESIDUAL LUMP-SUM PAYMENTS—[REMOVED]

3. Part 238 consisting of §§ 238.1 through 238.8 is removed.

Dated: January 15, 1986.

By Authority of the Board.

Beatrice Ezerski,

Secretary of the Board.

[FR Doc. 86–1420 Filed 1–22–86; 8:45 am]

BILLING CODE 7905-01-M

PENSION BENEFIT GUARANTY CORPORATION

26 CFR Part 2619

Valuation of Plan Benefits in Non-Multiemployer Plans; Amendment Adopting Additional PBGC Rates

Correction

In FR Doc. 86–871, beginning on page 1788 in the issue of Wednesday, January 15, 1986, make the following corrections:

On page 1789:

1. In the table appearing in the second and third columns, the entry "2–2–86" that follows Rate set 61 should read "2–1–86".

2. In the third column, under Appendix B, third line. "G" should read "G".

BILLING CODE 1505-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DOD 6010.8-R, Amdt. No. 35]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Elimination of Preauthorization Requirement for Cosmetic, Reconstructive and Plastic Surgery

AGENCY: Office of the Secretary, DoD.

ACTION: Amendment to final rule.

SUMMARY: This amendment revises the comprehensive CHAMPUS Regulation, DoD 6010.8-R (32 CFR Part 199), by eliminating the administrative requirement for preauthorization for cosmetic, reconstructive, and plastic surgery under OCHAMPUS. Elimination of preauthorization relieves the beneficiary of an administrative burden for obtaining benefits under CHAMPUS.

DATE: This amendment is effective March 15, 1986.

FOR FURTHER INFORMATION CONTACT: Charles E. Guidice, Policy Branch, CHAMPUS, Aurora, Colorado 80045, telephone 303-361-3586.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the **Federal Register** on April 4, 1977, (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title.

In FR Doc. 85-10769 appearing in the **Federal Register** on May 3, 1985 (50 FR 18888), the Office of the Secretary of Defense published for public comment a proposed amendment eliminating all requirements for preauthorization for cosmetic, reconstructive and plastic surgery. Public comments were to be submitted by June 3, 1985, but was extended to July 8, 1985, to accommodate all those who wished to comment.

Except for two, all comments received supported the proposed rulemaking.

The only two comments received nonconcurred with the proposal on the basis that elimination of the preauthorization requirement would lift the only safeguard against beneficiary indebtedness for expensive surgical procedures which are not covered under CHAMPUS and transfer all authorization responsibility to the CHAMPUS fiscal intermediaries. One commentor further stated that since beneficiary access to the fiscal intermediary is limited, this measure does not adequately protect the service family.

We disagree that beneficiary access to the fiscal intermediary is limited. Each fiscal intermediary has a toll free telephone number for information, which will be reiterated in a news release in conjunction with this amendment.

The other commentor was also concerned with the necessity for transferring preauthorization requirements to the fiscal intermediary for a small number of claims.

This amendment will eliminate all requirements for preauthorization for cosmetic, reconstructive, and plastic surgery and the CHAMPUS fiscal intermediary would be the single point of contact for initial determination of care. Preauthorization for these services will be eliminated entirely relieving the beneficiary of an administrative burden for obtaining benefits under CHAMPUS.

List of Subjects in 32 CFR Part 199

Health insurance, Military personnel, Handicapped.

Accordingly, 32 CFR, Chapter I is amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086; 5 U.S.C. 301.

2. In § 199.10, by revising paragraph (a)(11); by removing paragraph (e)(8)(iv) in its entirety and redesignating paragraph (e)(8)(v) as (e)(8)(iv).

§ 199.10 Basic program benefits.

(a) * * *

(11) *Preauthorization.* Because CHAMPUS benefits are limited for certain types of care, the beneficiary is required to obtain preauthorization from the Director, OCHAMPUS, or a designee, before the services are provided. The types of care for which preauthorization is required are identified in other parts of this section.

* * * * *

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 17, 1986.

[FR Doc. 86-1442 Filed 1-22-86; 8:45 am]

BILLING CODE 3810-01-M

32 CFR Part 251

[DoD Directive 4175.1]

Sale of Government-Furnished Equipment or Materiel and Services to U.S. Companies

AGENCY: Office of the Secretary, DoD.

ACTION: Interim rule.

SUMMARY: This interim rule implements section 305(2) of Pub. L. 98-525, 10 U.S.C. 2208(i). The rule provides guidance on sales to U.S. companies of defense articles and defense services in connection with proposed exports and sales from working capital funded DoD Army arsenals that manufacture large caliber cannons, gun mounts, or recoil mechanisms. The rule revises 32 CFR Part 251.

DATES: Effective January 1, 1986. Written comments must be received on or before March 15, 1986.

ADDRESS: Defense Security Assistance Agency, Attention: OPS-E, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Mr. Robert D. Wise, telephone 202-697-8108.

SUPPLEMENTARY INFORMATION: In order to effect prompt implementation, the Uniformed Services will follow the interim rule until a final rule is issued. Comments will be available for public inspection by request. Because of the anticipated number of comments, DoD does not plan to acknowledge or respond to individual comments.

DoD has determined that this action is not a major rule as defined by Executive Order 12291. The rule will not have an annual effect on the economy $100 million or more; result in a major increase in the cost or prices for consumers, industries, State or local governments; or adversely effect competition, employment, investment, productivity, or innovation. This rule is not subject to the provisions of the Regulatory Flexibility Act. Therefore, no Regulatory Flexibility Analysis was prepared.

List of Subjects in 32 CFR Part 251

Department of the Army Working-Capital Fund, Department of the Army manufacturers of large caliber cannons, gun mounts or recoil mechanisms; Sale for manufacture, assembly or development, Defense Department, Exports, Government property.

Appendix A.—22 U.S.C. 2770

Chapter 2B.—Sales to United States Companies for Incorporation Into End Items

Sec. 30. General Authority.—(a) Subject to the conditions specified in subsection (b) of this section, the President may, on a negotiated contract basis, under cash terms (1) sell defense articles at not less than their estimated replacement cost (or actual cost in the case of services), or (2) procure or manufacture and sell defense articles at not less than their contract or manufacturing cost to the United States Government, to any United States company for incorporation into end items (and for concurrent or follow-on support) to be sold by such a company on a direct commercial basis to a friendly foreign country or international organization pursuant to an export license or approval under section 38 of this Act. The President may also sell defense services in support of such sales of defense articles, subject to the requirements of this chapter: *Provided, however,* That such services may be performed only in the United States. The amount of reimbursement received from such sales shall be credited to the current applicable appropriation, fund, or account of the selling agency of the United States Government.

(b) Defense articles and defense services may be sold, procured and sold, or manufactured and sold, pursuant to subsection (a) of this section only if (1) the end item to which the articles apply is to be procured for the armed forces of a friendly country or international organization (2) the articles would be supplied to the prime contractor as government-furnished equipment or materials if the end item were being procured for the use of the United States Armed Forces, and (3) the articles and services are available only for United States Government sources or are not available to the prime contractor directly from United States commercial sources at such times as may be required to meet the prime contractor's delivery schedule.

(c) For the purpose of this section, the terms "defense articles" and "defense services" mean defense articles and defense services as defined in sections 47(3) and 47(4) of this Act.

Appendix B.—22 U.S.C. 2208(i)

Sale of Articles Manufactured by Certain Arsenals

(i) (1) Regulations under subsection (h) may authorize an article manufactured by a working-capital funded Department of the Army arsenal that manufactures large caliber cannons, gun mounts, or recoil mechanisms to be sold to a person outside the Department of Defense if—

(A) the article is sold to a United States manufacturer, assembler, or developer (i) for use in developing new products, or (ii) for incorporation into items to be sold to, or to be used in a contract with, an agency of the United States or a friendly foreign government;

(B) the purchaser is determined by the Department of Defense to be qualified to carry out the proposed work involving the article to be purchased;

(C) the article is not readily available from a commercial source in the United States; and

(D) the sale is to be made on a basis that does not interfere with performance of work by the arsenal for the Department of Defense or for a contractor of the Department of Defense.

(2) Services related to an article sold under this subsection may also be sold to the purchaser if the services are to be performed in the United States for the purchaser.

(3) Nothing in this subsection shall be construed to affect the application of the export controls provided for in section 38 of the Arms Export Control Act to items which incorporate or are produced through the use of an article sold under this subsection.

Accordingly, Title 32 of the CFR is amended by revising Part 251 to read as follows:

PART 251—SALE OF GOVERNMENT-FURNISHED EQUIPMENT OR MATERIEL AND SERVICES TO U.S. COMPANIES

Sec.

Authority: Sec. 305(2) Pub. L. 98–525, Pub. L. 97–392, 10 U.S.C. 2208(i), 22 U.S.C. 2751–2796c, and 96 Stat. 1962.

§ 251.1 Reissuance and purpose.

This part reissues 32 CFR Part 251 expanding its coverage to implement 10 U.S.C. 2208(i). It provides policy, assigns responsibilities, and prescribes procedures.

§ 251.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified Commands, and the Defense Agencies (hereafter referred to as "DoD Components"). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

§ 251.3 Policy.

(a) The Department of Defense executes the authority provided by 22 U.S.C. 2751–2796c to sell to U.S. companies defense articles and defense services (hereafter also "items") in connection with proposed exports on a direct commercial basis pursuant to State Department licenses or approvals under 22 CFR Parts 121–130 and 22 U.S.C. 2778–2779. The Department of Defense also executes the authority provided by 10 U.S.C. 2208(i) to sell articles manufactured by certain arsenals and related services to a person outside the Department of Defense. 10 U.S.C. 2208(i) applies only to a working capital funded Department of Army Arsenal that manufactures large caliber cannons, gun mounts, or recoil mechanisms.

(b) Sales under 22 U.S.C. 2751–2796c may be authorized only if the following applies:

(1) The items are of a type approved for foreign military sales (FMS);

(2) Sale to a U.S. company under this part would simplify and expedite the direct commercial sale involved;

(3) The items are of the type that would be supplied to the prime contractor as government-furnished equipment (GFE) or materiels (GFM) for manufacture or assembly into end items for use by the Military Services, and have in fact been supplied as GFE or GFM in connection with any past or present DoD procurement of such end items; and

(4) The other provisions of this part are complied with.

(c) Sales under 10 U.S.C. 2208(i) may be authorized by the Department of the Army only if the following applies:

(1) The article or related services are sold to a United States manufacturer, assembler, or developer (i) for use in developing new products or (ii) for incorporation into items to be sold to, or to be used in a contract with, an agency of the United States or a friendly foreign government.

(2) The sale has been previously approved by the Office of Deputy Assistant Secretary of Defense (Production Support), or a designee. When commercial export is involved, the Defense Security Assistance Agency approval is also required.

(3) The other applicable provisions of this part are complied with.

§ 251.4 Definitions.

(a) *Authorized Purchasers under 22 U.S.C. 2751–2796c.* A company incorporated in the United States as defined in paragraphs (a) (1) and (3) or in paragraphs (a) (2) and (3) of this section.

(1) The existing prime contractor for the specific end item with a DoD contract for final assembly or final manufacture in the United States of the end item for use by the Military Services.

(2) A known DoD-qualified producer of the end item to be used by the Military Services, or one considered by the commanding officer of the Military Department procuring activity to be a responsible contractor for final assembly or final manufacture in the United States of the end item for use by the Military Services, and which is not debarred, ineligible, or suspended for defense procurement contracts.

(3) A U.S. manufacturer which has an approved license under the International Traffic in Arms Regulations, which provides for the use of GFE or GFM in the direct commercial export to a foreign country for the use of the armed forces of that country or international organization. The license shall identify the defense end item being sold and exported, the quantity and identification of concurrent and follow-on spares, end item delivery schedule, and name of the ultimate user.

(b) *Authorized Purchasers under 10 U.S.C. 2208(i).* A company as defined in § 251.4(b) (1) through (3). Where export of an article from the United States is involved, §§ 251.4(4) also applies.

(1) A company incorporated in the United States.

(2) A DoD-qualified manufacturer, assembler, or developer of articles.

(3) A company considered by the Commanding Officer of the Military Department procuring activity to be a responsible contractor for the proposed work.

(4) A company exporting articles is restricted to sales to a friendly foreign government and must have an approved license under the International Traffic in Arms Regulations, which provides for use or sale of the article in the direct commercial export to a foreign country for use by the armed forces of that country. The license shall identify the article being sold and exported, the quantity and identification of arsenal produced items provided as concurrent and follow-up spares, item delivery schedule and name of the ultimate user.

§ 251.5 Procedures.

(a) *Defense Articles and Defense Services Authorized for Sale under 22 U.S.C. 2751–2796c.* (1) Defense items that currently are in fact being furnished (or have in fact been furnished) by the U.S. Government as GFE or GFM to a U.S. company that is or has been under contract to the Department of Defense for final assembly or final manufacture into an end item for use by the Military Services.

(2) Defense services that are directly associated with the installation, testing, and certification of GFE that are or have been in fact provided by the U.S. Government to a U.S. company in connection with the U.S. Government procurement of similar end items for use by the Department of Defense. Such defense services, including transportation under paragraph (3)(ii) may be performed only in the United States and only in support of the sale of defense articles under this part, that is, services alone may not be provided under this part.

(3) Defense items shall not be procured by the Department of Defense for sale under section 30 if they are available to the authorized purchaser directly from U.S. commercial sources at such times as may be required to meet the delivery schedule of the authorized purchaser.

(b) *Articles and Services Authorized for Sale under 10 U.S.C. 2208(i).* (1) Articles that can be manufactured without present or future interference with performance of work by the Arsenal for the Department of Defense or for a contractor performing for the Department of Defense.

(2) Articles shall not be sold by Army Arsenals if they are readily available to the authorized purchaser directly from a U.S. commercial source.

(3) Services that are directly associated with the articles sold. Such services, including transportation under § 251.5(3)(ii) may be performed only in the United States and only in support of the sale of articles under this part, that is, services alone may not be provided under this part.

(4) Nothing in this part shall be construed to affect the application of the export controls provided for in section 38 of the Arms Export Control Act to items which incorporate or are produced through the use of an article sold under this part.

(c) *Pricing, Financing, and Accounting.* (1) To afford U.S. companies the ability to conduct planning and marketing of items, Military Departments are authorized to provide cost and delivery scheduling data to authorized potential purchasers (see paragraph (4) above) in advance of execution of a sales agreement. Such data shall be identified as estimates and shall not be binding on the U.S. Government. Efforts shall be made to provide accurate data.

(2) Actual sales of items shall be made in cash, with payment upon signature of the sales agreement by the representatives of the U.S. Government and the U.S. company. Payment shall be received by the U.S. Government in U.S. dollars upon such signature and shall precede procurement action by the U.S. Government or, in cases of stock sales, delivery to the authorized purchaser.

(3) Sales prices for procurement, or sales from DoD stocks under Section 30 shall be established in accordance with DoD 7290.3–M. Prices to be charged shall be the same as those established for FMS of the same defense articles and services, to include all applicable FMS surcharges and accessorial charges, including an amount for administration not less than the FMS administrative surcharge. Full replacement cost pricing shall be used for all sales of defense articles from DoD stocks and all diversions from DoD procurement, even when a lower price could be charged under FMS pricing principles. Sales prices (under 10 U.S.C. 2208(i)) for articles to be exported or for independent research and development will include the same FMS surcharges and accessorial charges. Contracts with U.S. contractors for DoD requirements will be priced in the same manner as material procured by the Department of Defense. Sales to Federal customer other than the Department of Defense shall be priced in accordance with Chapter 26 of the DoD Accounting Manual, DoD 7220.9–M.

(4) An obligation for a reimbursable procurement may not exceed the cash received from an authorized purchaser as prescribed in paragraph (c)(2). If there is an increase in the procurement contract cost, the purchaser shall be required to make additional cash payment to the Military Service to fund the contract fully, plus applicable surcharges, when such an increase is known. The replacement cost of Defense Articles delivered from DoD stocks may not exceed the cash received from an authorized purchaser as prescribed in paragraph (c)(2).

(5) Accountability shall be in accordance with 22 CFR Parts 121–130 and 22 U.S.C. 2778–2779 with reimbursements from sales being credited to the current appropriation, fund, or account of the selling agency. Surcharges, on items sold under 22 U.S.C. 2751–2796c such as nonrecurring cost recoupment charge, asset use charge, and FMS administrative surcharge, shall be accountable as FMS surcharges under 22 CFR Parts 121–130 and 22 U.S.C. 2778–2779. Amounts collected for items sold under 10 U.S.C. 2208(i) shall be credited to accounts specified in paragraph 10402 of Foreign Military Sales Financial Management Manual DoD 7290.3–M.

(d) *Establishment of Priorities and Allocations.* (1) Unless otherwise directed by the Under Secretary of Defense for Policy in coordination with the Assistant Secretary of Defense (Acquisition and Logistics), sales are not

authorized if they result in inventory stockage levels dropping below the established reorder points. Except as provided in section 21(i) of the Arms Export Control Act, sales are not authorized if they constitute a withdrawal of assets from U.S. stocks that result in a significant adverse impact on the combat readiness of the Military Services.

(2) When procurement is required, or manufacture in government-owned facilities is necessary, the Military Department concerned shall determine whether a sale will be concluded. Unless directed by the Defense Security Assistant Agency (DSAA) (see paragraph (d)(3)) the Military Department concerned is responsible for the establishment of priorities for procurement or manufacture and for allocations and delivery of military equipment and services. In determining production priorities and allocations, the Military Departments shall consider fully all existing DoD requirements for U.S. and other foreign requirements and normally will schedule delivery, manufacture, and allocation on a first-in, first-out basis. In making such determinations the Military Departments shall be guided by DoD Directive 4410.6 and related assignments of force activity designators by the Joint Chiefs of Staff.

(3) If there are two or more competing foreign requirements, the Director, DSAA, shall determine priorities or shall make allocations. Such priorities or allocations for foreign requirements shall supersede determinations made by the Military Department under paragraph (d)(2).

(e) *Sales Agreement.* (1) The sales agreement with the U.S. company will identify the company, the items and quantities being sold, the estimated availability of the items, whether from DoD stocks or procurement, the estimated price of the items, the end item into which the GFE or GFM item or items will be incorporated for resale, and, for sale under 22 U.S.C. 2751–2796c the identity of the foreign purchaser and the number and date of the munitions export license, or State Department approval.

(2) The sales agreement shall be approved by the appropriate Military Department's General Counsel and shall, as a minimum, indicate that the U.S. Government:

(i) Retains the right to cancel in whole or in part or to suspend performance at any time under unusual or compelling circumstances if the national interest so requires.

(ii) Provides no warranty or guarantee, either expressed or implied, regarding the items being sold.

(iii) Shall provide best efforts to comply with the delivery leadtime cited, but will incur no liability for failure to meet an indicated delivery schedule.

(iv) Shall use its best efforts to deliver at the estimated prices, but that the purchaser is obligated to reimburse the U.S. Government for the total cost if it is greater than the estimated price.

(3) Moreover, the sales agreement shall state that:

(i) Payment terms are cash, payable in advance, in accordance with § 251.3(1);

(ii) Delivery shall be "FOB origin" with purcahser to arrange for continental U.S. (CONUS) transportation, except for sensitive or hazardous cargo that normally shall be shipped by way of the Defense Transportation Service (DTS) at rates established in DoD 7290.3–M;

(iii) The purchaser is responsible for both insurance coverage, if desired, and ultimate customs clearance for export;

(iv) The purchaser is required to reimburse the U.S. Government for all costs incurred by the U.S. Government if the purchase agreement is cancelled by the purchaser before delivery of the defense material or completion of defense services.

(v) The purchaser renounces all claims against the U.S. Government, its officers, agents, and employees arising out of or incident to this agreement, whether concerning injury to or death of personnel, damage to or destruction of property, or other matters, and will indemnify and hold harmless the U.S. Government, its officers, agents, and employees against any such claims of third parties and any loss or damage to U.S. Government property.

(vi) The items sold to foreign governments on a direct commercial basis under an approved export license may be used only for incorporation into end items or as concurrent or follow-on support in conjunction with a sale of the end item and for no other purpose. The U.S. company agrees to provide for protection of classified information and will require the agreement with the foreign government to provide for protection of U.S. classified information.

§ 251.6 Responsibilities.

(a) The *Under Secretary of Defense for Policy*, or designee, shall provide overall guidance regarding the sale of GFE or GEM to U.S. companies for commercial export.

(b) The *Director, Defense Security Assistance Agency*, shall: (1) Monitor the sale of GFE or GEM to U.S. companies and implementation of this part with coordination with the Assistant Secretary of Defense for Acquisition and Logistics where applicable.

(2) Determine priorities or make allocations between two or more competing foreign requirements.

(c) The *Assistant Secretary of Defense (Acquisition and Logistics)*, or designee shall approve all sales under 10 U.S.C. 2208(i) in accordance with policies set forth in DoD Directive 4005.1.

(d) *The Secretaries of the Military Departments:* (1) Shall execute the functions conferred upon the Secretary of Defense by section 30.

(2) May redelegate the authority under 22 U.S.C. 2751–2796c, but such delegation may not be below the level of the commanding officer or head of a procuring activity of the Military Department responsible for procurement or acquisition of the applicable end item.

(3) Shall provide a quarterly report to the Director, DSAA, of sales made to U.S. companies under 22 U.S.C. 2751–2796c.

(e) *The Secretary of the Army:*

(1) Shall execute the functions conferred by 10 U.S.C. 2208(i).

(2) May delegate the authority under 10 U.S.C. 2208(i).

(f) *The Assistant Secretary of Defense (Comptroller)* shall monitor pricing compliance and financial administration set forth under DoD 7290.3–M.

§ 251.7 Information requirements.

(a) The quarterly report (see § 251.4(3)) shall be provided within 30 days of the end of each fiscal quarter and shall contain the information specified in Appendix 1.

(b) The reporting requirement of this Directive has been assigned Report Control Symbol DSAA(Q)1149. The report format is at Appendix 1.

APPENDIX 1.—FORMAT OF STATUS REPORT ON SALES OF GFE OR GFM AND RELATED QUALITY ASSURANCE SERVICES (RCS DSAA (Q)1149)

For period ending_____

_____

(Military Department)

U.S. company	Items [1] being sold	Quantities	Stock source	Procurement source	Estimated availability	Estimated price	Recipient foreign country and recipient armed force	Export [2] license No. and date	Date of delivery	Final price

[1] Provide breakout of items being sold as concurrent or follow-on spares that will not be incorporated into an end item by the U.S. company before sale to a foreign government.
[2] Or other State Department approval.

Linda Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-1254 Filed 1-22-86; 8:45 am]

BILLING CODE 3810-01-M

32 CFR Part 290

Freedom of Information; Availability of DCAA Records

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY: DCAA's Freedom of Information Act (FOIA) rules are being reissued to implement the Department of Defense (DoD) DoD Directive 5400.7 (32 CFR Part 286) and supplement the single DoD Freedom of Information Act Regulation, DoD 5400.7-R, both of which were subsequently published. The rules are also being revised to include the expansion of an administrative indexing system that alters the Agency's original implementation of 5 U.S.C. 552(a)(2). The changes in the indexing system were made for the convenience of possible users but does not constitute a determination that all documents listed in the index are within the scope of subsection (a)(2) of the Freedom of Information Act.

In addition, this rule contains corrections in names of organizational elements, titles of Agency officials, addresses, and other minor editorial corrections.

EFFECTIVE DATE: January 1, 1986.

ADDRESS: Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304-6178.

FOR FURTHER INFORMATION CONTACT: Connie L. Miller, Records Administrator, Defense Contract Audit Agency, Alexandria, VA 22304-6178, telephone: 202-274-7246.

SUPPLEMENTARY INFORMATION: DCAA's Freedom of Information Act (FOIA) rules were originally published in the **Federal Register**, Volume 40, No. 34, Wednesday, 19 February 1975. On 13 April 1977, DCAA published in the **Federal Register** (42 FR 19356) a notice of proposed rule making setting forth rules and regulations of DCAA which implemented the Freedom of Information Act (5 U.S.C. 552). After considering the final comments that were submitted in response to the publication of the proposed rule, DCAA published its final rules in the **Federal Register**, Volume 42, No. 154, Wednesday, August 10, 1977.

List of Subjects in 32 CFR Part 290

Freedom of Information.

Accordingly 32 CFR Part 290 is amended to read as follows:

PART 290—[AMENDED]

1. The authority citation for Part 290 continues to read as follows:

Authority: 5 U.S.C. 301 and 552, as amended by Pub. L. 93-502, Nov. 21, 1974.

§ 290.2 [Amended]

2. Part 290, § 290.2. Remove last two sentences. Insert "Its Director reports to the Assistant Secretary of Defense.".

§ 290.5 [Amended]

3. Part 290. § 290.5(a). In the first sentence after the word "headquarters" remove "located at Cameron Station, Alexandria, Virginia,". In the second sentence, change "300" to "400". In the second sentence, after "(FAOs)", insert "and suboffices". In the third sentence, after the word "called", remove "branch, resident, and procurement liaison offices" and insert "branch and resident offices.". In the fourth sentence remove the word "Managers" and replace with "Directors". In the fourth sentence after the word "service" insert "or effective communication and coordination between procurement and contract audit elements".

4. Part 290. § 290.5(b). In the first sentence after the word "headquarters" insert "located at Cameron Station, Alexandria Virginia,". After the word "of" change "seven" to "eight".

5. Part 290. § 290.5(b)(3). In the first sentence after the word "Operations" remove "and Professional Development". In the first sentence after the phrase "and the" remove "Defense Contract Audit Institute" and insert "Technical Services Center".

6. Part 290. § 290.5(b)(4). In the first sentence after the word "procedures," insert "and the Defense Contract Audit Institute, Memphis, Tennessee,". In the first sentence following the word "Operations" remove "and Professional Development." Insert a period following "Operations".

7. Part 290. § 290.5(b)(5). In the first sentence following the word "Operations" remove "and Professional Development".

8. Part 290, § 290.5(b)(6). Remove entire paragraph.

9. Part 290, § 290.5(b)(7). Change paragraph from "(7)" to (6)". In the first sentence following the word "The" insert "General".

10. Part 290, § 290.5(b)(8). Change paragraph from "(8)" to "(7)". In the first sentence following the word "Officer" remove rest of paragraph and replace with the following: "performs a variety of confidential and sensitive special projects and assignments for the Director."

11. Part 290, § 290.5. Add new paragraph (b)(8) to read as follows: "(8) The Special Assistant for Quality Control reviews the agency's compliance with established quality control standards, policies, and procedures.".

12. Part 290, § 290.5(c). In the second sentence following the word "Regional" remove the word "Managers" and insert "Directors". In the third sentence following the word "are:" remove "Office of the Regional Manager, Assistant Regional Manager for Audit Management, Assistant Regional Manager for Resources, and Assistant for Special Projects" and insert "Office of the Regional Director, Deputy Regional Director, Regional Special Programs Manager, and Regional Resources Manager.".

§ 290.22 [Amended]

13. Part 290, § 290.22. In the second sentence following the word "and" remove "§286.4" and insert "§286.14". In the third sentence following the word "no" remove "significant and legitimate Governmental purpose would be served by withholding the record." and insert "governmental interest will be jeopardized by their release.".

14. Part 290, revise § 290.24 to read as follows:

§ 290.24 Public inspection and copying.

(a) 5 U.S.C. 552(a)(2) requires agencies to make available for public inspection and copying those materials discussed in § 286.20 of this subchapter. The action in this section is being taken for the convenience of possible users and does not constitute a determination that all of the documents are within the scope of subsection (a)(2) of the Freedom of Information Act.

(b) DCAA documents pertaining to contract audit are derived from Office of Management and Budget/Office of Federal Procurement Policy issuances, Cost Accounting Standards Board promulgations, Federal Acquisition Regulations, and Pub. L. 87–653 (Truth in Negotiations), and disseminated to staff under the Quarterly Index of DCAA Numbered Publications and Memorandums (DCAA Instruction 5025.2) in numerical order under topical headings and indicated by 4-digit designators. The 5400 series covers public affairs and the 7640 series covers audit topics. Other numerical topical series cover internal housekeeping procedures that are issued by the Department of Defense and other Federal agencies under whose administrative regulations DCAA operates.

(c) The numbered publications discussed in paragraph (b) of this section, are infrequently amended or supplemented by interim numbered memorandums pending formal revision to the numbered publication. Additionally, numbered memorandums are issued as auxiliary illustrations and managerial reminders. Such staff memorandums are indexed in the Quarterly Index of DCAA Numbered Publications and Memorandums. Memorandums issued by Headquarters are referred to as Memorandum for Regional Directors (MRDs); those issued by regional offices to FAOs are called Regional Memorandums (RMs).

(d) The DCAA Quarterly Index of Numbered Publications and Memorandums will not be published in the **Federal Register** because of the volume and the limited applicability to the general public. However, the index is available upon request at no costs.

(e) The DCAA Headquarters and each of the six regional offices will publish a quarterly index of the documents discussed above and the documents that are generally available to the public will be maintained in the reading rooms of the Headquarters, regional offices, FAOs, and the Defense Contract Audit Institute.

(f) Documents identified in the DCAA Headquarters or regional quarterly indexes are generally available to the public through purchase from DCAA or the Superintendent of Documents. However, in some instances, it may be necessary to deny all or portions of a document that falls under an exemption of the Freedom of Information Act. In such cases, the requester will be advised fully in writing of the rationale for invoking the exemption.

§ 290.25 [Amended]

15. Part 290, § 290.25(b). In the fourth sentence following the word "desired" remove "without substantial reprogramming" and insert "with an existing program or printout.".

16. Part 290, § 290.25(c). In the first sentence following the word "to" remove "§ 286.8" and insert "§ 286.60".

17. Part 290, § 290.25(c)(1). Remove remainder of paragraph (c)(1) following the word "than" the 1st time it appears and insert "the automatic fee waiver threshold specified in § 286.60.".

18. Part 290, § 290.25(c)(3). In the first sentence, change "286.11" to read "286.50".

19. Part 290, § 290.25(c)(5). In the third sentence, change "$60.00" to read "$40.00".

20. Part 290, § 290.25(e)(1). Following the state abbreviation "VA" change "22314" to read "22304–6178.".

21. Part 290, § 290.25(e)(2). Following the word "Regional" change "Manager" to read "Director,". Remove "P.O. Box 1498, Marietta, Ga 30060", and replace with "805 Walker St., Suite 103, Marietta, GA 30060–2731.".

22. Part 290, § 290.25(e)(3). Following the word "Regional" change "Manager" to read "Director,". Following the word "Waltham" the second time it appears change "Mass" to read "MA". Change the Zip Code from "02154" to "02154–6397.".

23. Part 290, § 290.25(e)(4). Following the word "Regional" change "Manager" to read "Director,". Following the word "Chicago" change "Ill" to read "IL". Change the Zip Code from "60605" to "60605–1096.".

24. Part 290, § 290.25(e)(5). Following the word "Regional" change "Manager" to read "Director,". Remove "1340 West Sixth Street, Second Floor, Los Angeles, California 90017." and replace with "2500 Wilshire Boulevard, Suite 1270, Los Angeles, CA 90057–4366.".

25. Part 290, § 290.25(e)(6). Following the word "Regional" change "Manager" to read "Director,". Remove "Federal Building, 1421 Cherry Street, Philadelphia, PA 19101." and replace with "600 Arch Street, Philadelphia, PA 19106–1604.".

26. Part 290, § 290.25(e)(7). Following the word "Regional" change "Manager" to read "Director,". Change the Zip Code from "94102" to "94102–3563.".

27. Part 290, § 290.26(b)(2). After the word "confidential" in the second sentence insert "commercial, financial, or trade secrets".

28. Part 290, § 290.26(b)(3). In the first sentence following the word "Regional" change "Manager" to read "Director,".

§ 290.28 [Amended]

29. Part 290, § 290.28 In the first sentence following "Va." remove "22314" and replace with "22304–6178.". In the third sentence following the word "Operations" remove "& Professional Development,".

Dated: January 16, 1986.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86–1341 Filed 1–22–86; 8:45 am]

BILLING CODE 3810–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AD–FRL–2934–8]

State Implementation Plans for Visibility Long-Term Strategies, Integral Vistas, and Review of Existing Impairment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of deficiency.

SUMMARY: In this action, EPA finds deficient State implementation plans (SIP's) of 32 States for failure to comply with provisions for visibility long-term strategies, integral vista consideration, or review of existing impairment of 40 CFR Part 51.300 to 307. The EPA will propose SIP disapproval and a Federal remedy to these deficiencies in June 1986.

DATES: A comment period on this notice closes on March 24, 1986.

ADDRESSES: Comments should be submitted (in triplicate, if possible) to:

Central Docket Section (LE–131), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Attention: Docket Number A–85–26.

Docket: The EPA has established a docket for this rulemaking, Docket A–85–26, in accordance with section 307(d) of the Clean Air Act (Act), 42 U.S.C. 7607(d). Materials related to development of the visibility protection program (40 CFR 51.300 et seq.) have been placed in Docket Number A–79–40. Materials related to development of a Federal visibility monitoring plan and visibility new source review provisions have been placed in Docket Number A–84–32. All dockets are available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, D.C. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Janet Metsa, Standards Implementation Branch (MD–15), Control Programs Development Division, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, (919) 541–5540 or FTS 629–5540.

SUPPLEMENTARY INFORMATION:

Background

A. Strategy and Regulatory Requirements

Section 169A of the Act, 42 U.S.C. 7491, requires visibility protection for mandatory Class I Federal areas where EPA has determined that visibility is an important value. "Mandatory Class I Federal areas" are certain national parks, wilderness areas, and international parks as described in section 162(a) of the Act, 42 U.S.C. 7472(a). The EPA identified 156 of these areas where visibility is an important air quality value (see 44 FR 69122). Section 169A specifically requires EPA to promulgate regulations requiring certain States to amend their SIP's to provide for visibility protection for these 156 areas.

On December 2, 1980, EPA promulgated the required visibility regulations at 45 FR 80084, codified at 40 CFR 51.300 et seq. The visibility regulations require 36 States listed in § 51.300(b) to: (1) Develop a program to assess and remedy visibility impairment from new and existing sources, (2) develop a long-term (10–15 years) strategy to assure progress toward the national goal, (3) develop a visibility monitoring strategy to collect information on visibility conditions, and (4) consider any "integral vistas" (important views of landmarks or panoramas considered by the Federal land managers (FLM's) to be critical to the visitor's enjoyment of the Class I areas) in all aspects of visibility protection. These regulations only address a type of visibility impairment which results from a single source or small group of sources known as reasonably attributable impairment or plume blight. The regulations required the States to submit revised SIP's satisfying those provisions to EPA by September 2, 1981 [see 45 FR 80091, codified at 40 CFR 51.302(a)(1)].

B. Litigation Challenges

Numerous parties sought judicial review of the visibility regulations in the United States Court of Appeals for the District of Columbia Circuit. These cases were consolidated as *Mountain States Legal Foundation* v. *EPA*, Number 80–2454. The D.C. Circuit Court stayed the consolidated litigation in March 1981 pending EPA action on related administrative petitions for reconsideration of the visibility regulations filed with the EPA. As a result of this litigation and the petitions, few States initiated work on revised visibility SIP's.

In December 1982, the Environmental Defense Fund, et al. (EDF) filed a citizen's suit in the United States District Court for the Northern District of California alleging that EPA had failed to perform a nondiscretionary duty under section 110(c) of the Act to promulgate visibility SIP's for the 35 States that had failed to submit SIP's to EPA (*EDF* v. *Gorsuch*, Number C82–6850 RPA). The State of Alaska had submitted a SIP which was approved on July 5, 1983, at 48 FR 30623. The EPA and EDF negotiated a settlement agreement for the remaining States which the Court approved by order on April 20, 1984. For more information on details of the provisions of the settlement, including a complete schedule of actions by EPA, see EPA's announcement of the agreement at 49 FR 20647 (May 16, 1984).

The settlement agreement requires EPA to promulgate visibility SIP's on a specified schedule for those States that have not submitted visibility SIP revisions to EPA. Specifically, the agreement requires EPA to first propose SIP's covering the new source review and monitoring provisions under 40 CFR 51.305 and 51.307. The EPA proposed such plan revisions for 34 States on October 23, 1984, at 49 FR 42670. The EPA promulgated its new source review provisions for 15 States and its monitoring strategy for 19 States on July 12, 1985, at 50 FR 28544. The EPA is reviewing the SIP's submitted in lieu of Federal promulgation and will approve those SIP's or promulgate the Federal plan at the appropriate time, as required by the settlement agreement.

SIP Deficiencies

In today's notice, EPA finds the SIP's of 32 States deficient with respect to implementation of control strategies (section 51.302), one State deficient for consideration of integral vistas (sections 51.302–307), and 32 States deficient for development of a long-term strategy (section 51.306). To make these determinations, the EPA reviewed the SIP's and currently pending SIP submittals of all 36 States named in section 51.300 for completeness with respect to these provisions. The results of a SIP survey are included in the Docket A–85–26. In addition, EPA requested information from the FLM's on existing visibility impairment for their Class I areas. The responses to those requests are also in Docket A–85–26.

A. Implementation of Control Strategies

Section 51.302(b)(1)(ii) of the CFR Title 40 requires that the States allow comment from the FLM's by establishing a contact for the FLM's to submit information on identification of impairment in any mandatory Class I Federal area. On April 1, 1985, EPA requested from the FLM's in charge of all 156 mandatory Class I Federal areas where visibility is an important value to supply information available to them which would indicate current visibility impairment in their areas. The responses are included in full in the docket. The National Park Service (NPS) identified eight Class I areas in seven States which have suspected reasonably attributable impairment. The U.S. Forest Service identified 14 Class I areas in 10 States which have suspected reasonably attributable impairment. The U.S. Fish and Wildlife Service identified four Class I areas in four States which have suspected reasonably attributable impairment. The Roosevelt-Campobello International Park Commission also submitted information on existing impairment.

Under § 51.302(c)(4)(i), the State must analyze for best available retrofit technology (BART) each existing stationary facility which may reasonably be anticipated to cause or contribute to impairment of visibility in any mandatory Class I Federal area. Additionally, if a State requires BART emission limitations to be met, it must also require each source to maintain that control equipment (section 302(b)(3)).

Section 51.302(c) sets forth general requirements for the visibility protection plan. The plan must include: (1) A mechanism to allow the FLM's to identify impairment at any time, (2) a long-term strategy to meet the visibility goal, (3) an assessment of visibility and a list of emission limitations representing BART. Some States have incorporated the visibility assessment requirement into the visibility monitoring strategy.

None of the following States submitted SIP revisions which specifically address these requirements. In addition, EPA has reviewed the existing SIP's for their ability to meet all these requirements. The EPA finds the following States' SIP's deficient for failure to meet the provisions of § 51.302, regarding general visibility implementation requirements.

Alabama	New Hampshire*
Arizona*	New Jersey*
California*	New Mexico*
Colorado*	North Carolina*
Florida	North Dakota
Georgia	Oregon*
Hawaii	South Carolina*
Idaho*	South Dakota
Kentucky	Tennessee
Louisiana	Texas
Maine*	Utah*
Michigan*	Vermont
Minnesota*	Virginia*
Missouri	Virgin Islands
Montana*	West Virginia*
Nevada*	Wyoming*

*States where FLM has identified suspected reasonably attributable impairments.

B. Integral Vista Provisions

The States are required to list integral vistas named by the FLM's as part of their SIP's. Those named after SIP development would be included during the periodic review of the long-term strategy component of the SIP. There is only one set of integral vistas officially named by an FLM. It is for the Roosevelt-Campobello International Part (see 46 FR 22707). The Department of the Interior and the Department of Agriculture have declined to name integral vistas. Only the Maine SIP is proposed to be called deficient for not meeting the integral vista provisions within §51.302–307. States with approved SIP's or those currently developing SIP's, which include integral vistas based on a proposed list by the NPS or State decisions may keep those integral vistas as part of the SIP. States other than Maine, however, are not required to list any integral vistas.

C. Long-Term Strategy

The visibility regulations require development of a long-term strategy as part of the SIP which assures progress toward the national goal established by section 169A of the Act. The regulations under section 51.306 require the protection plan to include a long-term strategy for each mandatory Class I Federal area that may be affected by sources within the State. The long-term strategy must include: (1) A discussion of why the long-term strategy is sufficient to meet the national goal, (2) a provision for periodic review and revision resulting in a report to the public on progress made toward the national goal, (3) a discussion of certain elements included or not included in the long-term strategy, and (4) the ability to consider economic factors in the long-term strategy development. Because the following States have not submitted plan revisions which specifically address these requirements and because the existing SIP's are insufficient, EPA finds the following States' SIP's deficient for failure to meet the provisions of section 51.306, regarding development of a long-term strategy.

Alabama	New Hampshire
Arizona	New Jersey
California	New Mexico
Colorado	North Carolina
Florida	North Dakota
Georgia	Oregon
Hawaii	South Carolina
Idaho	South Dakota
Kentucky	Tennessee
Louisiana	Texas
Maine	Utah
Michigan	Vermont
Minnesota	Virgin Islands
Missouri	Virginia
Montana	West Virginia
Nevada	Wyoming

The States of Arkansas, Oklahoma, and Washington have submitted SIP's which address all the requirements of § 51.300–307. The EPA will review these SIP's and announce its decision of approval or disapproval in accordance with its usual SIP procedures and the appropriate provisions of the EPF–EPA settlement agreement. The EPA has approved SIP provisions for visibility protection for the State of Alaska. The remaining States may submit SIP's to address these provisions to avoid Federal promulgation under the provisions of the EDF–EPA settlement agreement.

The EPA solicits comments on these findings. The EPA realizes that States are still in the process of revising SIP's to meet the provisions of § 51.305 (monitoring) and § 51.307 (new source review). Some are also developing the entire visibility protection program, but have not yet officially submitted any SIP revisions. The EPA is willing to work with the States to avoid Federal promulgation of plans and will allow the States every opportunity to submit plans that can be made under the settlement agreement with EDF. This notice will form the basis for preparation of Federal implementation plans to remedy the deficiencies cited herein. Development of these Federal plans will follow the requirements of the EDF settlement agreement.

The EPA has established a docket for this notice and subsequent rulemaking, Docket Number A–85–26. The docket is an organized and complete file of all significant information submitted to or otherwise considered by EPA during this proceeding. The contents of Docket Number A–85–26 will serve as the record in the case of judicial review under section 307(b) of the Act, 42 U.S.C. 7607(b).

Dated: January 11, 1986.

Lee M. Thomas,

Administrator.

[FR Doc. 86–1317 Filed 1–22–86; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 799

[OPTS–42048B; FRL–2944–9]

Hydroquinone; Testing Requirements

Correction

In FR Doc. 85–30722 beginning on page 53145 in the issue of Monday, December 30, 1985, make the following corrections:

1. On page 53148, in the second column, in the tenth line from the top of the page, "behavior" should appear before "of".

2. On page 53149, in the third column, in the fourth line of the first complete paragraph, "*Salmonella*" was misspelled.

3. On page 53151, in the first column, in the ninth line of the second complete paragraph, "1" should appear before "mg/L".

4. On the same page, in the second column, in the ninth line from the bottom of the page, "provides" should read "provided".

5. On page 53152, in the third column, "who" should be inserted at the beginning of the fifth line from the bottom of the first complete paragraph.

6. On page 53155, in the third column, in the seventh line from the top of the page, "of" should read "or".

BILLING CODE 1505–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[Gen. Docket No. 81-500; BC Docket No. 78-108; FCC 85-648]

Policy Regarding Character Qualifications in Broadcast Licensing

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action, Gen. Docket No. 81-500 modifies the Commission's approach to evaluating the character qualifications of broadcast applicants. Pursuant to the policies adopted herein, inquiry into an applicant's character has been narrowed, focusing on behavior which demonstrates the propensity to deal honestly with the Commission and the proclivity to comply with the Communications Act and the Commission's rules. In this regard, the range of behavior relevant to the Commission's character inquiry has been divided into two basic categories. Non-FCC related misconduct relevant to an applicant's character includes adjudicated cases of fraud before another governmental agency, criminal convictions based on fraud or deceit and, in some circumstances, felony convictions. FCC related misconduct relevant to an applicant's character includes any violation of the Communications Act or Commission rules and policies. Adjudicated violations of antitrust and anticompetitive laws will also be considered relevant to an applicant's character. In addition, this action clarifies the evaluation of character issues that are raised in the corporate and multiple ownership contexts. Finally, this action eliminates character as comparative issue in both comparative new and comparative renewal proceedings. In a related proceeding, BC Docket 78-108, the Commission has adopted new regulations prohibiting misrepresentations in written responses to Commission inquiries.

EFFECTIVE DATE: February 20, 1986, except § 73.4280 which is effective January 23, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David L. Donovan or Andrew J. Rhodes, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio and television broadcasting.

Report, Order and Policy Statement

In the matter of Policy Regarding Character Qualifications In Broadcast Licensing, Gen. Docket No. 81-500 and Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees, BC Docket No. 78-108.

Adopted: December 10, 1985.
Released: January 14, 1986.

By the Commission.

I. Introduction

1. Before the Commission is our *Notice of Inquiry* (hereinafter "NOI") in Gen. Docket No. 81-500 [1], regarding character qualifications in broadcast licensing, and the comments and reply comments submitted in response thereto. Also before the Commission is our *Notice of Proposed Rule Making* (hereinafter "NPRM") BC Docket No. 78-108 [2], concerning establishment of new broadcast rules mandating the submission of timely and accurate responses to Commission inquiries by permittees and licensees, and the comments filed in response to that NPRM.[3] The related nature of these proceedings makes their joint consideration appropriate.[4]

II. Purpose of the Proceeding

2. Section 308(b) of the Communications Act states in pertinent part that "[a]ll applications for station licenses, or modifications or renewals thereof, shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, *character*, and financial, technical, and other qualifications of the applicant to operate the station. . . .". (Emphasis supplied.) Similar language regarding construction permit applications is found in section 319(a), and, under the provisions of section 310(d) of the Act, applications for transfer or assignment of permits or licenses are treated as if the proposed transferee or assignee were filing under section 308. The finding of facts regarding qualifications is not, however, an end in itself. Rather, it is a step in the process of evaluation by which the Commission determines whether the public interest would be served by grant of the application before it.[5]

3. In the NOI, the Commission observed that we had, over the years, "considered a wide range of conduct in examining applicants' character." We stated that this action had been taken "without the benefit of a comprehensive policy statement detailing the relevance of the character examination to the broadcast licensing scheme and identifying what conduct is pertinent to the analysis."[6] It was the Commission's objective in this proceeding, we said, to develop a "clearly articulated licensing policy" which would allow us to "focus on behavior which is truly relevant to broadcast licensing and to tailor [our] actions to these licensing goals." Such a policy, we hoped, would facilitate "more consistent and, thus, fairer decisionmaking by the Commission." It would also "reduce the substantial amount of time and resources now spent by this agency examining questions relating to an applicant's conduct which, even if resolved against the applicant, would not cause the Commission to deny the application."[7]

4. The fundamental thrust of the NOI, then, was the Commission's concern that those "character" matters considered in broadcast licensing proceedings be clearly relevant to the licensing process, and that the process be made more equitable and efficient.[8]

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[1] 87 FCC 2d 836 (1981).

[2] 43 FR 14693 (April 7, 1978).

[3] A complete list of those commenting in both proceedings appears as Appendix "A".

[4] *See* our discussion of BC Docket No. 78-108 in the NOI, 87 FCC 2d at 855, n. 59.

[5] *See* sections 307(a), 309(a), and 319(c) of the Communications Act. Under section 309(i), only the qualifications of the "tentative selectee" are fully examined. The sole broadcast service currently subject to licensing by lottery is low power television ("LPTV").

[6] We noted that the only policy guidance on this issue, which deals with but one aspect of it, was adopted more than thirty years ago. *Establishment of a Uniform Policy to be Followed in Licensing of Radio Broadcast Stations Cases in Connection with Violation by an Applicant of Laws of the U.S. Other than the Communications Act of 1934, as Amended*, 42 FCC 2d 399 (1951) (hereinafter "*Uniform Policy*").

[7] NOI, *supra* note 1, at 837.

[8] Applicants' claims of inequitable treatment are a frequent feature of proceedings involving character. The Commission's obligation to explain departures from precedents in this area, and, where it relies on factual differences with such precedents, to explain the relevance of those differences to its purposes and those of the Communications Act (unless the differences are so obvious as to remove the need for explanation) was made clear in *Melody Music, Inc.* v. *FCC*, 345 F.2d 730 (D.C. Cir. 1965). *See, also, White Mountain Broadcasting Co.* v. *FCC*, 598 F.2d 274, 277-280 (D.C. Cir. 1979), *cert. denied*, 444 U.S. 963 (1979). As to the epic length and complexity which proceedings involving character issues may assume, *see RKO General, Inc.* v. *FCC*, 670 F. 2d 215, 218-221 (D.C. Cir. 1981), *cert. denied*, 456 U.S. 927 (1982); *Mid-Florida Television Corporation*, 87 FCC 2d 203, 204-209 (1981).

We explained that one source of difficulty in reaching such an objective has been the lack of Congressional guidance as to the definition of "character" to be utilized by the Commission. This has, on occasion, led to use by either the Commission or the courts of a wide-ranging notion of "moral" character of limited value in the licensing process.[9] Use of the absolutist concept of "moral" character requires the Commission to explain why behavior which evidences sufficiently "bad" character to warrant denial of an application in one instance does not mandate the same result in another, apparently similar case.[10]

5. Additional difficulties arose, the Commission observed, in the disparity of treatment which had been accorded existing licensees, whose broadcast record might be factored into Commission analyses in mitigation of character "defects," and new nonbroadcaster applicants, as to whom no such record was available. Further complexity was involved in the disposition of "character" issues involving owners of groups of stations. For example, if the judgment is made that a broadcaster is of sufficiently "bad" character to be denied license renewal in one community, may that same "bad" entity still be allowed to retain a license in another community?

6. Our review of the record in this proceeding and the experience gained from years of evaluating the character qualifications of numerous applicants convinces us that substantial changes to the Commission's character policies are warranted. Generally, the Commission considers an applicant's character in two contexts. Initially, the Commission conducts an inquiry as to whether an applicant possesses the basic threshold character qualifications necessary to be a licensee or permittee. The second setting in which character issues may be raised is as part of a comparative proceeding. Once a character issue has been designated in a comparative proceeding, the Commission makes a determination whether an applicant should receive a comparative demerit. In this regard, the Commission's character evaluations in comparative proceedings have necessarily resulted in an attempt to determine which applicant possesses the best character and have caused parties to such proceedings to seek to impugn each other's character in pursuit of comparative hearing advantages.

7. We believe it is appropriate to modify both aspects of the Commission's character inquiry. With regards to the basic threshold character evaluation, we find that the scope of the present inquiry is overly broad. Accordingly, future inquiries into an applicant's basic character eligibility will be narrowed to focus on the likelihood that an applicant will deal truthfully with the Commission and comply with the Communications Act and our rules and policies. An analysis of these specific traits will serve as guidelines for all future inquiries regarding applicant misconduct. Thus, while we shall continue to refer to such evaluations as a character inquiry, the scope of our analysis will be much narrower than the term "character" implies. Consistent with this new approach, we will modify the range of both FCC related and non-FCC related misconduct that will be considered relevant to our inquiries.[11] In addition, modifications will be made to threshold character inquiries arising in the corporate and multiple ownership contexts. Second, we believe that once the basic character fitness of a potential licensee has been established, character issues should not be considered as a comparative issue. Thus, character issues will no longer be designated as comparative issues in either competing new or in comparative renewal proceedings.

8. We shall now turn to a discussion of the specific issues raised by the NOI in the proceeding. An analysis of issues relating to narrowing the focus of our threshold character inquiry appears in Section III below. Section IV contains a discussion of the issues relating to character in the comparative context. Our decision regarding the issues raised by the NPRM in BC Docket No. 78–108 can be found in section V.

III. Issues Analysis

9. The Commission addressed the issues inherent in the consideration of "character" by raising a series of questions in the NOI on which parties might comment. At the same time, we indicated our tentative views on these matters. We believe it appropriate to resolve the issues before us in a similar fashion. Thus, our format in this document will be to present the question first set forth by the Commission in the NOI, summarize our initial (NOI) views on the matter, discuss the comments received, and state our conclusions as to the policy to be followed in the future.

A. "Character" vs. "Conduct"

1. Questions in the NOI

10. The first two questions raised in the NOI lend themselves to joint consideration:

(a) What purpose is served by scrutinizing an applicant's so-called "character" qualifications?

(b) Is there a better way to evaluate an applicant's future reliability than the kind of wide-ranging inquiries conducted in the past?

11. As to the purpose served by scrutinizing an applicant's character qualifications, the Commission stated in the NOI that while the applicant's legal, technical and financial qualifications help to establish the entity's ability to perform, they do not "tell us whether we can rely on the applicant to perform prospectively all of the obligations of a broadcast licensee." Thus, we tentatively concluded that "our concern with probable future behavior is unavoidable," and that if we have "reason to believe an applicant cannot be expected in the future to fulfill its obligations as a broadcast licensee, its application should be denied."[12]

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[9] The broadest definition of character in this vein appears to have been articulated in *Mester* v. *United States*, 70 F. Supp. 118, 122 (E.D.N.Y. 1974), *aff'd per curiam*, 332 U.S. 749 (1947), cited with approval in such cases as *Southeastern Massachusetts Broadcasting Corp.*, 12 FCC 363, 372 (1947); *WKAT, Inc.*, 29 FCC 221, 238 (I.D. 1958); *Armond J. Rolle*, 31 FCC 2d 533, 536 (Rev. Bd. 1971); and *RKO General, Inc.*, 78 FCC 2d 1, 48–49 (1980), *aff'd in part, remanded in part on other grounds, RKO General, Inc.* v. *FCC*, *supra* note 8. As to the dangers inherent in the use of such terminology as "good moral character," see *Konigsberg* v. *State Bar of California*, 353 U.S. 252, 262–264 (1957).

[10] *See supra* note 8. The Commission is not, of course, bound "to deal with all cases at all times as it has dealt with some that seem comparable," *FCC* v. *WOKO*, 329 U.S. 223, 228 (1946), and it frequently occurs that decisions turn on meaningful distinctions found in the course of case-by-case reviews. As to the difficulty of reconciling apparently disparate treatment, however, *see Cumberland Broadcasting Corporation* v. *FCC*, 647 F.2d 1341 (D.C. Cir. 1980) (brief acquiescence in attorney misconduct does not warrant disqualification); *WADECO, Inc.* v. *FCC*, 628 F.2d 122 (D.C. Cir. 1980) (lengthier period of apparent acquiescence in attorney's actions leads to disqualification); *WEBR, Inc.* v. *FCC*, 420 F.2d 158 (D.C. 1969) (good faith reliance on counsel in case where application not properly amended avoids disqualification).

[11] FCC related misconduct describes activity which violates the Communications Act or a specific Commission rule or policy. *See* 47 U.S.C. § 151 et. seq.; 47 CFR 0.1 et. seq. The term non-FCC misconduct describes misconduct which may be a violation of law but does not specifically contravene the Communications Act or a specific Commission rule or policy. In this regard, we note that non-FCC misconduct may include broadcast station related misconduct not specifically proscribed by the Act or the Commission. See *infra* at para. 31.

[12] However, we questioned whether we should continue to try to predict the prospective broadcast performance of a new nonbroadcaster applicant. We asked whether, as to this new applicant, with no broadcast record, an alternative might be to "withhold judgment at the time of initial licensing and rely on our forfeiture and revocation powers to deal with actual problems with a licensee's performance." *See infra* para. 49.

12. However, the Commission questioned whether we should continue to attempt to forecast an applicant's reliability as a licensee by examining its *character* as such. Would it not be more appropriate, we asked, for the Commission to "evaluate *directly* the relevance of an applicant's past *misbehavior* to its capacity to use the requested radio authorization in the public interest." (Emphasis supplied). We stressed the point that in the licensing process, the "only relevant misconduct" might well be "that which aids us in predicting what type of broadcast activity may be expected in the future." We suggested that past consideration of applicants' "moral" character had involved inquiries going substantially beyond these boundaries. Thus, we queried whether the Commission was "required specifically to consider an applicant's moral character during the licensing process." We requested comment on the actual nature of the duty, if any, imposed upon the Commission by section 308(b) and section 319(a).

2. Comments Regarding What Section 308(b) Requires

13. It appears that the threshold issue in this aspect of this proceeding is the matter of what sort of inquiry into character, if any, the Communications Act requires. Commenting parties' views in this regard may generally be summarized as concluding that, at the least, the Commission has substantial discretion under the statute to determine the manner in which it will consider character issues. Parties such as CBS, Inc. ("CBS") believe that the inquiries authorized by sections 308(b) and 319(a) are permissive, while other commenters, including Citizens Communications Center ("Citizens"), see the provisions as mandatory. However, almost all of those commenting on this point agree that the Commission is allowed significant latitude as to the scope of the inquiry to be conducted. American Broadcasting Companies, Inc. ("ABC") and Tribune Company ("Tribune") further note that the focus of section 308(b) and section 319(a) is the consideration of the qualifications of the applicant "to operate the station," a concern which does not appear to mandate examination of an applicant's "moral" character in the licensing process.[13]

[13] *See infra* para. 21.

3. Conclusions on Section 308(b) Requirements

14. The Commission acknowledges, as the National Citizens Committee for Broadcasting ("NCCB") points out, that in the *Uniform Policy* the Commission itself concluded that section 308(b) both gave it "the authority and imposed upon it the duty" to examine basic character qualifications "in evaluating applicants for radio facilities." However, even in that document the Commission indicated its awareness of its discretion as to the substance of such examinations, stating that these inquiries obviously did not "include every aspect of an applicant's behavior, but only that part which has some reasonable relationship to ability to operate a broadcast station in the public interest."[14]

15. A review of the case law on this point indicates that the courts have on a number of occasions read sections 308(b) and 319(a) to require Commission inquiry into character.[15] This has not, however, been the conclusion reached in at least two recent cases. In *National Association of Regulatory Utility Commissioners* v. *FCC*,[16] the DC Circuit Court of Appeals interpreted Section 308(b) as leaving it "within the discretion of the Commission to decide which facts" relating to the factors, such as character, enumerated in that section, "it wishes to have set forth in applications." The Court found that "this leaves the Commission free to have no facts set forth on any of these matters, if it finds such action appropriate." This being so, the Court concluded, it necessarily followed that in the matter then in dispute the Commission was not required to consider the subject of financial fitness at all if it deemed that area "irrelevant to its regulatory scheme." In a subsequent case, *Black Citizens for a Fair Media* v. *FCC*,[17] the DC Circuit Court of Appeals, citing *NARUC I* with approval, reaffirmed the Commission's discretion over the nature of the inquiries to be conducted as part of the licensing process.[18]

16. Upon reflection, we are of the view that the better-reasoned approach is that taken in *NARUC I* and *BCFM*. That is, we find that the list of subjects as to which the Commission "may inquire" in sections 308(b) and 319(a) is neither exhaustive nor mandatory. These statutory sections do not of themselves require that the Commission make any inquiry into the character qualifications of broadcast applicants.[19]

17. Whether and, if at all, to what degree the Commission ought to inquire into the character qualifications of its broadcast applicants is thus a matter which must be determined by consideration of the "regulatory scheme" of the Communications Act. In this regard, it appears that the relevant inquiry to be made is whether the "public interest" standard embodied in the Communications Act requires or would be served by the continuation of Commission inquiries into character as part of the licensing process. Assuming such an inquiry is appropriate, the question becomes whether an evaluation of an applicant's behavior should include all aspects of the applicant's character or whether the inquiry should focus on specific traits that are directly relevant to our regulatory scheme. Our resolution of this question is advanced by consideration of the responses to our question in the NOI as to the purpose served by scrutinizing an applicant's character qualifications.

4. Comments on Purpose of "Character" Scrutiny

18. We note that most commenters, including the National Radio Broadcasters Association ("NRBA"), the National Broadcasting Company, Inc. ("NBC"), Tribune and CBS, believe the proper focus of our qualifications

[14] *Uniform Policy*, 42 FCC 2d at 400.

[15] The cases generally provide little supporting analysis. *See Las Vegas Valley Broadcasting Co.* v. *FCC*, 589 F.2d 594, 598 (D.C. Cir. 1978), *cert. denied*, 441 U.S. 931 (1979), *reh. denied*, 442 U.S. 947 (1979); *Lebanon Valley Radio, Inc.* v. *FCC*, 503 F.2d 196, 200 (D.C. Cir. 1974); *WEBR, Inc.* v. *FCC*, *supra*, at 164; *L.B. Wilson, Inc.* v. *FCC*, 397 F.2d 717, 719 (D.C. Cir. 1968); *Charles P.B. Pinson, Inc.* v. *FCC*, 321 F.2d 372, 374 (D.C. Cir. 1963); *Stahlman* v. *FCC*, 126 F.2d 124, 127 (D.C. Cir. 1942). *See, also, KSIG Broadcasting Company* v. *FCC*, 445 F.2d 704, 709–710 (D.C. Cir. 1971).

[16] 525 F.2d 630, 645 (D.C. Cir. 1976) *cert. denied*, 425 U.S. 992 (1976) (hereinafter "*NARUC I*").

[17] 719 F.2d 407 (D.C. Cir. 1983) *cert. denied* 104 S. Ct. 3545 (hereinafter "*BCFM*").

[18] The Commission's discretion, the Court observed, runs both to defining the public interest and to determining the FCC procedures which "best assure protection of that interest." The Court did, however, read Section 308(b) "to require the inclusion of certain technical information, such as licensee ownership, although it does not prescribe specific questions." *Id.*, at 413. As to the matter of the Commission's discretion, see generally *FCC* v. *WNCN Listeners Guild*, 450 U.S. 582 (1981); *Pinellas Broadcasting Co.* v. *FCC*, 230 F.2d 204, 206 (D.C. Cir. 1956), *cert. denied*, 350 U.S. 1007 (1956); *FCC* v. *WOKO*, *supra* note 10, at 227–229; *Stahlman* v. *FCC*, *supra* note 15, at 127; *FCC* v. *Pottsville Broadcasting Company*, 309 U.S. 134, 138, 143–146 (1940).

[19] We observe that this view also appears in accord with Judge Wright's dissenting opinion in *BCFM*. *BCFM*, *supra* note 16, at 430–431. Additionally, this reading is consistent with general principles of statutory construction. 2A C.D. Sands, *Sutherland Statutes and Statutory Construction* § 57.11 (4th ed. 1972).

inquiry is, as the Commission suggested in the NOI, prediction of the reliability of the broadcast service to be provided the public by the applicant. In taking this approach, NBC and others state, the Commission's concern should be with the predictive nature of significant past *conduct* upon the licensee's future broadcast performance, rather than with the morally-tinged *character* concept. The National Association of Broadcasters ("NAB"), however, suggests that the way to avoid judgments regarding "good" and "bad" character is to focus the Commission's licensing process on deterrence of misconduct and minimize "the making of predictive judgments concerning licensee fitness."

19. Contrary to this approach, NCCB and the National Black Media Coalition ("NBMC") state that inquiring into *character* itself is necessary to fulfill the Commission's duty to ensure that broadcasters operate in the public interest. Citizens contends that as deregulation of broadcasting proceeds, the Commission's need to rely on its licensees' judgment and good faith increases, and that the character inquiry is relevant to trustworthiness. The Office of Communication, United Church of Christ ("UCC") views the inquiry into character qualifications as a positive means of determining the ability of the licensee to make good on its promises and obligations to the Commission, its advertisers and the general public.

20. ABC argues that as section 308(b) is concerned with the Commission's inquiry into the qualifications of the applicant "to operate the station," the Commission should narrow its definition of "character" to the traits necessary to accomplish that purpose. To achieve that objective, ABC contends, the Commission must first define what constitutes station operation in the public interest, at least for these limited purposes. A grant would be consistent with the public interest, ABC suggests, if the Commission can find that "(a) the applicant can reasonably be expected to be honest and candid in its dealings with the Commission . . . and (b) the applicant can reasonably be expected to operate the broadcast facility consistent with the requirements of the Act, Commission rules and policies."[20] The essential affirmative character traits which are relevant to the Commission's statutory objectives, ABC concludes, are honesty and responsibility.[21]

5. Conclusions About Character and the Public Interest Standard

21. The Commission enjoys broad discretion "both to define the public interest and to determine what procedures best assure protection of that interest."[22] We find that there is great merit to ABC's conclusion that for the purposes of the present discussion, a license grant would be in the public interest if the applicant can be expected to be honest in its dealings with the Commission and can also be expected "to operate the station" consistent with the requirements of the Communications Act and the Commission's rules and policies. ABC identifies the "character" traits of honesty and responsibility as relevant to fulfilling these objectives. Viewed from this perspective, we believe that inquiry into "character" as an element of the licensing process is consistent with the regulatory scheme. As the Commission long ago observed, licensing "enables future conduct." Issuance of an authorization "entails at best only an estimate that performance under the license will be worthy." Thus, it is wholly appropriate that in aid of the forecasting process, the Commission looks "for clues as to risks and for evidence as to expectable performance."[23] We believe, however, that the current broad ranging character inquiry may not properly isolate those aspects of behavior which are necessarily probative as to an applicant's future conduct. In this regard, we find that future evaluations should be narrowly focused on specific traits which are predictive of an applicant's propensity to deal honestly with the Commission and comply with the Communications Act or the Commissions rules or policies. As Citizens suggests, deregulation emphasizes the significance of the Commission's judgments regarding applicants' prospective performance.

22. Further, it does not, upon consideration of the record developed in this proceeding, appear that it is necessary to halt review of character matters as such in order to reach the objectives which were identified in the NOI and appear to be concurred in by most commenting parties: Commission consideration under "character" criteria only of matters clearly relevant to the licensing process, with that process made more equitable and efficient.[24]

23. The key factor involved in the support of some commenters for a "conduct" as opposed to a "character" standard generally appears to be the desire for elimination of the morally-tinged decision-making of the past. However, establishing a dichotomy between "conduct" and "character" is not necessary to achievement of less value-laden decision-making.[25] The record developed herein clearly indicates that neither sections 308(b) and 319(a) nor the public interest standard embodied in the Communications Act mandates the type of "good vs. bad/evil" treatment of "moral" character which sometimes colored past Commission deliberations. Focusing on the character traits necessary "to operate the station," as ABC suggests, seems a proper move in the direction of a more relevant, less value-laden character inquiry. This is the case both as to applicants who are now licensees and as to new nonbroadcaster applicants. ABC describes these traits as honesty and responsibility, for which the record indicates that the terms "truthfulness" and "reliability" might properly be substituted. Whether an applicant has or lacks these qualities is, of course, a matter which can only be addressed by considering behavior.[26] The "better way" to evaluate an applicant's future "reliability" than the sort of inquiries conducted in the past is generally identified by commenters addressing the issue as a narrowing of Commission concern to encompass only misconduct relevant to operation of broadcast stations.[27] And so a fundamental issue

[20] The Commission, ABC states, does not appear to have ever required more, citing *Central Texas Broadcasting Co., Ltd.*, 74 FCC 2d 393, 396 (1979).

[21] As to the NOI's question regarding the usefulness of continuing to attempt to predict a new, non-broadcaster applicant's future broadcast performance, parties commenting on the matter, including CBS, ABC and Citizens, generally suggest that such inquiry, including some consideration of past nonbroadcast misconduct, if any, may be necessary. However, NAB argues that such inquiries regarding new applicants are of dubious value. *See infra* paras. 26–30.

[22] *BCFM, supra* note 17, at 413. See, also, *FCC* v. *WNCN Listeners Guild, supra* note 18, at 596; *FCC* v. *Pottsville Broadcasting Company, supra* note 18, at 137–138 (1940).

[23] *Westinghouse Broadcasting Company, Inc.*, 44 FCC 2778, 2783 (1962) (hereinafter *"Westinghouse I"*).

[24] As ABC notes in its reply comments, the question which emerges is not whether the Commission should confine its inquiry to relevant behavior, but what behavior is relevant.

[25] Further, it is the case that character is exemplified by conduct.

[26] We observe that deterrence is also an element of the character qualifications process, as the deterrent effect of our actions helps to ensure future reliability and truthfulness. *See FCC* v. *WOKO, supra* note 10, at 228. Thus, deterrence is a factor which exists within the penumbrae of the character traits with which we are concerned. *See infra* para. 103.

[27] Section 73.24(d) of the Commission's Rules, which was adopted June 30, 1939, (4 FR 2714, 2716), requires that an applicant for an AM station be of

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which the remainder of this document seeks to address is the nature of the conduct relevant to making the requisite character findings. We will be concerned with misconduct which violates the Communications Act or a Commission rule or policy, and with certain specified non-FCC misconduct which demonstrate the proclivity of an applicant to deal truthfully with the Commission and to comply with our rules and policies.

B. Predicting Applicant Reliability

1. Questions Regarding Range of Relevant Behavior

24. As to this point, it is appropriate to consider the third question raised by the Commission in the NOI:

> [c] What types of behavior are reasonably related to predicting an applicant's future reliability as a broadcaster?"

25. The Commission set forth lengthy tentative views under this heading, concluding as an initial step that "our attention as a regulatory agency should be focused on matters directly relevant to performance as a broadcaster in the public interest." As to non-FCC misconduct, we contended that we "lack the expertise and the resources to interpret other statutes and to make value judgments about behavior unrelated to the broadcast licensing function." Thus, we solicited comment as to whether Commission considerations could be limited to "misconduct which directly affects the broadcaster's use of licensed facilities and the broadcast service to be rendered to the public as well as the Commission's ability to protect the public."

a. *Existing Licensees.* 26. The Commission further divided the discussion into consideration of the treatment to be afforded applications involving existing licensees as differentiated from the handling of filings from new applicants. We suggested that as to existing licensees, "the best predictor of future service is the applicant's past [broadcast] service". We questioned whether in forming our judgments as to how such applicants might perform in the future our licensing concerns

> should be limited to broadcast misconduct such as misrepresentation or lack of candor to the Commission, deception or defrauding of the broadcast public, abuse of broadcast facilities through fraudulent or anticompetitive commercial practices, and violations of the Communications Act or the Commission's rules and policies.

b. *New Nonlicensee Applicants.* 27. As to new nonlicensee applicants, the primary focus of the Commission's NOI discussion was "whether any misconduct which does not involve broadcasting is relevant to our licensing responsibility and, if so, which types of misconduct are pertinent." The Commission remarked that we had previously "examined nonbroadcast related misconduct on the theory that it demonstrates a propensity to violate regulations designed for public protection." We stated that while we did not "doubt the appropriateness of examining *pertinent* aspects of an applicant's past history," [28] we did question "the pertinence of most activities engaged in outside the field of broadcasting to predicting future broadcast conduct." We specifically solicited comment as to whether the current scope of the *Uniform Policy* is appropriate.

2. Comments Regarding Range of Behavior Relevant to Applicant Reliability

a. *Existing Licensees.* 28. Commenters including ABC, NBC, American Family Corporation ("AFC"), Tribune, CBS, and John Blair & Company/Post-Newsweek Stations ("Blair/Post-Newsweek") generally concur with the Commission's tentative decision that inquiries regarding existing licensees should focus on the applicant's broadcast record. Thus, NBC states that the Commission should limit its considerations to specific conduct which has had a substantial impact on the licensee's broadcast service, which is likely to recur and which would therefore indicate that the licensee's future service as a broadcaster would not serve the public interest. CBS proposes that the questionable behavior's impact on the broadcast audience be the key issue. CBS contends that whether a licensee has made loans at usurious rates of interest or been involved in questionable activities abroad seems to be of highly dubious relevance to the broadcast service provided to the audience. NRBA would confine the inquiry to instances of clear misrepresentation to the Commission, and to station-related misconduct only as that is relevant to future reliability. ABC would, however, make an exception to the broadcast-only rule for consideration of non-FCC misconduct "so egregious as to preclude a continued finding that the applicant is honest and reliable." [29]

29. A different position on the issue is taken by parties including NCCB, UCC and the Committee for Community Access ("CCA"). They contend that both broadcast and nonbroadcast behavior is relevant to the degree such behavior raises questions about an applicant's ability to serve the public interest. UCC further states that in examining nonbroadcast conduct, the Commission should not be bound by the determinations of other forums, which may have nothing to do with the scheme of broadcast regulation. Citizens, NBMC and NCCB argue that Commission and various parties have overstated the difficulties and flaws inherent in implementation of our traditional system of character review.

b. *New Nonlicensee Applicants.* 30. Comments regarding the consideration of nonbroadcast misconduct in cases involving new nonlicensee applicants was quite diverse. ABC and CBS see the need to make predictive judgments as requiring some scrutiny of nonbroadcast activity. Citizens and UCC argue that such inquiries are needed because, *inter alia*, an initial evaluation of character cannot be replaced by forfeiture or revocation proceedings, which are too complex and place too heavy a burden on the Commission. NAB contends that such inquiry should be confined in scope if the Commission feels compelled to conduct it. NAB would limit consideration of the nonbroadcast activities of new applicants to adjudicated felony convictions (which would not be automatically disqualifying). NAB observes that there is substantial ground for a presumption of reliability to be accorded to any applicant, absent serious indications to

"good" character. Similar rules were not adopted for the other broadcast services. We will interpret § 73.24(d) consistently with the action taken herein. We do not find, as ABC suggests, that it is necessary either to amend § 73.24(d) or to add similar rules for the other services. It should be noted that as to our question regarding a "better way" to evaluate future reliability, some commenters, such as NCCB, contend the current policies, if clarified, would be well-suited to effectuating the Commission's proper purposes. Commenters including BML Associates ("BML"), a minority-owned consulting firm active in the communications industry, and the National Association for Better Broadcasting ("NABB") argue that the Commission should continue to be concerned with what sort of persons ought to be permitted to become "fiduciaries for the public."

[28] Citing *Mansfield Journal Co. v. FCC*, 180 F.2d 28, 33 (D.C. Cir. 1950).

[29] ABC states in support of this exception that if "character" were absolutely limited to broadcast performance, "a licensee could, for example, assassinate the President of the United States and still receive a regular renewal if no defect were found in its station operations." ABC argues that "[s]uch a result would be outrageous." A related stance is taken by BML, which suggests that the Commission at the least should consider the fact that an applicant is "a murderer, or a terrorist, or had been convicted of felonies involving moral turpitude."

the contrary. Blair/Post-Newsweek take the position that since wrongdoing in nonbroadcast affairs is not necessarily predictive of service to the public, the burden should be on the party asserting that a character defect inheres in such behavior to make the connection. We are of the view that the range of non-FCC behavior should be the same for both new non-broadcaster applicants and incumbent licensees/permittees.

3. Conclusions on Range of Relevant Non-FCC Behavior

31. A character qualification established by government "must have a rational connection with the applicant's fitness" to do the thing sought to be done.[30] Our consideration of the record developed herein, together with our experience in administering the *Uniform Policy* for more than three decades, leads us to the conclusion that the necessary "rational connection" cannot be found in many of the types of situations as to which the Commission has over the years considered the non-FCC misconduct of its broadcast applicants.

32. In the *Uniform Policy*, the Commission stated that "pertinent aspects of the past history of the applicant" [31] would "clearly include any violation of Federal law," noting that we had in the past considered such conduct as "violations of Internal Revenue laws, conspiracy to violate antitrust laws, false advertising and other deceptive practices." The Commission held that it was "irrelevant to a determination of qualifications whether the finding of violation is in a civil or criminal case," that no significance was to be awarded to the nature of the tribunal making the finding, and that even if no suit has been filed, or a suit filed but not heard or finally adjudicated, "the Commission may consider and evaluate the conduct of an applicant in so far as it may relate to matters entrusted to the Commission."

33. Through the years, the Commission has generally declined "to explore matters currently being litigated before the courts or to duplicate the ongoing investigative efforts of other government agencies charged with the responsibility of interpreting and enforcing the law in question." [32] Nonetheless, we have been led to consider an incredible range of non-FCC behavior. [33] Even egregious non-FCC misconduct, however, has apparently not in itself been found to disqualify existing licensees, at least in the renewal context.[34] Thus Commission resources, and those of our applicants, have been spent in proceedings sometimes spanning decades, considering matters which, in any event, are not of themselves dispositive of action to be taken. Having fully considered the record on this matter as developed herein, and our experience with the *Uniform Policy*, we do not believe that the level of review of non-FCC misconduct called for by the *Uniform Policy* is justified.[35]

34. We believe that the non-FCC behavior of concern to us is that which allows us to predict whether an applicant has or lacks the character traits of "truthfulness" and "realiability" that we have found relevant to the qualifications to operate a broadcast station in accordance with the requirements of the Communications Act and of our rules and policies. Based on the record before us, we find it appropriate to focus generally on three types of adjudicated misconduct which are not specifically proscribed by the Act or our rules and policies: (1) Fraudulent statements to government agencies; (2) certain criminal convictions; and (3) violations of broadcast related anti-competitive and antitrust statutes.

a. Fraudulent misconduct before a government agency. 35. The concepts of "truthfulness" and "realiability" are, of course, closely related, as reliability includes the propensity to act consistent with one's representations. Thus, in the NOI the Commission noted that when it had "believed that an applicant's general integrity and future reliability were in doubt due to its past misrepresentations or lack of candor, the Commission has denied the application before it." [36] We have recently observed that misrepresentation "involves false statements of fact," while lack of candor "involves concealment, evasion, and other failures to be fully informative." However, we concluded that both misrepresentation and lack of candor "represent deceit; they differ only in form." [37] Deceit is equated with fraud.[38]

36. As we have noted, we do not believe that as a general matter non-FCC violations of law have sufficient relationship to the likelihood that an applicant will or will not in the future operate a broadcast station in compliance with the Commission's rules that these violations, adjudicated or not, should be considered in determinations on applicant qualifications. We are of the view, however, that there may be a sufficient nexus between fraudulent representations to another governmental unit and the possibility that an applicant might engage in similar behavior in its dealings with the Commission that non-FCC actions involving such behavior may be considered as having a potential bearing on character qualifications.[39] In

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[30] *Schware* v. *Board of Bar Examiners of New Mexico*, 353 U.S. 232, 239 (1957).

[31] Citing *Mansfield Journal Co.* v. *FCC*, *supra* note 28.

[32] *Revision of FCC Form 303, Application for Renewal of Broadcast Station License, and Certain Rules Relating Thereto*, 59 FCC 2d 750, 763 (1976). For a recent review of our practice in this regard, *See Alan K. Levin*, FCC 84R-18, 55 R.R.2d 981 (Rev. Bd. 1984) (dictum), *rev denied* FCC 85-130, *appeal pending sub nom. Levin* v. *FCC*, No. 85-1255 (D.C.Cir. 1985).

[33] *See* e.g. *KCOP*, 37 RR2d 1051 (1976) recon. denied 39 RR 2d 965 (whether wrestling matches violate state law is for the State Athletic Commission to decide); *Kaiser Broadcasting Corporation*, 31 RR 2d 46 (1974) (conviction of applicant for antitrust violations relying on past decisions of legality then overruled was not disqualifying); *Sande Broadcasting Corporation*, 38 RR 2d 685 (1976) (criminal acts of shareholder did not require hearing where shareholder not involved in daily operations and removed from corporation prior to felony conviction); *Sunshine Wireless, Inc.*, 45 RR2d 1699 (1979) (five year old National Labor Relations Board findings of failure to bargain do not impact renewal); *Abbey J. Butler*, 47 RR 2d 852 (1980) (grant without hearing denied where one transferee had signed securities law consent order, other transferee denied membership on a commodities exchange); *Tri-Cities Broadcasting*, 4 RR 2d 642 (Rev. Bd. 1965) (judgment against 10% shareholder for nonpayment of rent not conduct related to matters entrusted to the Commission); *D&E Broadcasting Co.*, 4 RR 2d 791 (Rev. Bd. 1965), 5 RR 2d 745 (1965) (whether or not applicant knowingly imported three horses into U.S. in violation of Tariff Act, the duty involved is only $19.50, he's not disqualified, but matter will be considered in comparative proceeding); *Bangor Broadcasting Corporation*, 23 RR 2d 883 (Rev. Bd. 1972) (Commission won't add issue as to possible unadjudicated violation of wage/price freeze); *Kenneth Harrison*, 35 RR 2d 911 (1975) (alleged state liquor law violations a matter for state courts).

[34] *RKO General, Inc., supra* note 9, at 49, *aff'd. RKO General, Inc.* v. *FCC*, *supra* note 8, at 227. *See, also, Westinghouse I, supra* note 23; *General Electric Co.*, 45 FCC 1592 (1964); *Westinghouse Broadcasting Company*, 75 FCC 2d 736 (1980) (hereinafter *"Westinghouse II"*); *Miami Valley Broadcasting Corporation*, 78 FCC 2d 684, 721-761 (1980), *vacated on other grounds*, 48 RR 2d 1065 (1980).

[35] We are not alone in holding such a viewpoint. *See*, for example, *Wilkett* v. *Interstate Commerce Commission*, 710 F.2d 861, 863-864 (D.C. Cir. 1983) (conviction of sole proprietor of trucking company for conspiracy to distribute a controlled substance and second degree murder no bar to determination that his company is fit to conduct motor carrier operations).

[36] NOI, *supra* note 1, at 847.

[37] *Fox River Broadcasting Company, Inc.*, 93 FCC 2d 127, 129 (1983).

[38] *Wester's New Collegiate Dictionary* 453 (1979). *See, also, Leflore Broadcasting Company, Inc.* v. *FCC*, 636 F.2d 454, 461-462 (D.C. Cir. 1980). As to our action herein regarding the future treatment of misrepresentation or lack of candor to the Commission, *see infra* paras. 53-61.

[39] "Fraud connotes prejury, falsification, concealment, mispresentation." *United States* v. *Nill*, 518 F.2d 793 (5th Cir. 1975), citing *Knauer* v. *United States*, 328 U.S. 654 (1946).

this context, adjudications of both criminal and civil violations of law could be considered in which a specific finding of fraudulent representation to another governmental unit is made.

b. Criminal convictions. 37. We also recognize that other types of non-FCC behavior may potentially bear on an applicant's character. In this regard, we believe that criminal convictions involving false statement or dishonesty could be relevant to predicting the propensity for an applicant to deal truthfully with the Commission.[40] Beyond convictions of crimes involving dishonesty, we also find that other serious crimes may be potentially relevant in determining character qualifications. We are of the view, however, that criminal convictions not involving fraudulent conduct are generally not relevant to an applicant's propensity for truthfulness and reliability,[41] unless it can be demonstrated that there is a substantial relationship between the criminal conviction and the applicant's proclivity to be truthful or comply with the Commission's rules and policies.[42] In this regard we find it appropriate to consider only felony convictions. The burden of proving that a substantial relationship exists shall be on the party seeking admission of such evidence. We believe that this strict standard properly balances our concerns with the probity of such evidence and our need to reduce unnecessary administrative delay in the hearing process.

c. *Antitrust and Anticompetitive Commercial Practices.* 1. *Issues.* 38. Another area as to which we inquired in the NOI was the proper treatment of misconduct by existing licensees in the form of fraudulent or anticompetitive station-related commercial practices. The Commission observed that we had historically been concerned with such unfair or fraudulent commercial practices as fraudulent billing, misleading coverage maps and network program clipping. These infractions, we remarked, "adversely affect a licensee's sponsors or business partners rather than the listening public." Thus, we contended, "a cogent argument can be made that such commercial misconduct should be left to private remedies in contract law or criminal fraud prosecution and that this Commission, with its limited resources, should not involve itself in policing these activities." The Commission suggested, however, that in an era of increasing reliance on marketplace forces to achieve public interest goals, fraud which negatively affects the marketplace might be a proper matter of consideration. Similarly, the Commission stated, "traditional anticompetitive behavior can have serious adverse consequences on the Commission's ability to rely on the competitive marketplace." An applicant engaging in station-related anticompetitive conduct might undercut the Commission's traditional goal of diversity in information resulting from diversity of ownership.

ii. *Comments.* 39. In this area, such commenters as CBS, NBC and ABC generally support relaxation of Commission consideration of both fraudulent commercial practices and anticompetitive commercial practices as matters affecting qualifications. ABC states that as a result of the Commission's approach to character, we have considered "a host of allegations" concerning violations of law unrelated to the Communications Act or our rules without ever inquiring, as a threshold matter, as to the relevance of such infractions to the likelihood that the applicant will be honest in its dealings with the Commission and operate its broadcast facility consistent with the Communications Act and Commission rules and policies. CBS argues that "however reprehensible certain commercial practices may be, they primarily affect a licensee's advertisers and business partners," and not what listeners and viewers hear and see. CBS and NBC state that ample remedies, both private and governmental, are available to deter such misconduct.

40. Additionally, CBS argues that the marketplace will provide a significant deterrent to fraudulent business practices. For example, CBS states that with numerous broadcast and nonbroadcast media outlets available, advertisers will not long deal with stations engaged in fraudulent billing. NBC argues that as to anticompetitive practices, the Commission "has every reason to rely on the operation of the marketplace," as supplemented by the agencies and courts directly responsible for policing such practices. NBC comments that "[t]he basic assumption supporting deregulation is not that anticompetitive activity will never take place, but rather that the marketplace is generally competitively structured and will function properly in a system of competitive free enterprise."

41. In opposition to changing our present practices, commenters including Citizens, NCCB and BML contend that licensees involved in fraudulent commercial practices such as double billing are not living up to the high commercial standards expected of "fiduciaries for the public." Citizens argue that licensees who engage in such practices are "more likely to misrepresent and disobey laws in other areas that more directly impact the public." As to anticompetitive practices, Citizens states that the policy which has been established in the Communications Act and by the Commission and the

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[40] We find that Rule 609 of the Federal Rules of Evidence is useful in identifying specific types of criminal misconduct which may be relevant to an applicant's character for truthfulness. While this rule is directed at the types of criminal behavior which may be used for witness impeachment purposes, we find it instructive in analyzing aspects of character relating to truthfulness and reliability in our regulatory scheme. Specifically, Rule 609(a)(2) permits the introduction of any criminal convictions, regardless of punishment, involving dishonesty such as perjury, criminal fraud and embezzlement. *See* Fed. R. Evid. 609(a)(2). We find this approach appropriate for our purposes.

[41] *See Leflore-Dixie, Inc.*, FCC 85R-19, Mimeo No. 2864, released March 4, 1985, (Rev. Bd.) (no nexus shown between one principals' prior felony conviction of obtaining diet pills by using a forged physician's signature and applicant's current qualifications; and allegations of drug use by another principal did not warrant a hearing issue because no criminal proceeding had been instituted and no showing had been made that the past behavior had any predictive value in ascertaining the applicant's ability to comply with Commission rules); *Alessandro Broadcasting Co.* 56 RR 2d 1568, 1575 n.13 (Rev. Bd. 1984) (conviction for second degree murder by an applicant's controlling shareholder did not warrant either disqualification or assessment of a substantial comparative demerit; since incident was remote in time and the individual was completely rehabilitated under local law, there was no predictive nexus between his past crime and his future fitness to be a Commission licensee); and *Central Texas Broadcasting Co.*, 51 RR 2d 1478, 1485-86 (Rev. Bd. 1982) (alleged violations of a state usury law and the Federal Age Discrimination Law, as well as a plea of *nolo contendere* to an indictment charging conspiracy to violate the federal antitrust laws, did not justify assessment of comparative demerits to competing applicants for a new TV station).

[42] We believe that our approach here is somewhat analogous to that found in section 609(a)(1) of the Federal Rules of Evidence. Pursuant to this rule, criminal felony convictions may be admissible only where the probative value of the evidence outweighs the prejudicial effect to a criminal defendent. In this regard, the Federal Rules recognize that the probative value of this type of evidence may not be sufficient to outweigh competing policy concerns in all situations. While proceedings before the Commission do not involve the rights of criminal defendants, other policy concerns such as undue delay, waste of administrative resources resulting from the presentation of evidence not directly applicable to our regulatory concerns justify our action herein. *See e.g.* Fed. R. Evid. 403. Our experience with criminal felony convictions that do not involve fraud or dishonesty persuades us that a strict examination of the relationship between the conviction and an applicant's propensity for truthfulness be conducted prior to designating a basic character qualifications issue for hearing. *See Alessandro Broadcasting Co. supra* note 41. In considering the threshold relevancy of these convictions, the Commission will evaluate factors such as the nature of the crime, its nearness or remoteness, and whether the individual has been rehabilitated. *See, e.g., Gordon v. United States*, 383 F.2d 936, 940 (D.C. Cir. 1967).

courts [43] requires that applicants who have engaged in anticompetitive conduct in both broadcast and nonbroadcast areas "be scrutinized with extreme care for any propensity to duplicate such conduct as a broadcast licensee." Such propensity, states NCCB, "is especially incompatible with broadcasting in the public interest." Blair-Post/Newsweek state that practices such as fraudulent billing and network clipping, although they may affect parties other than the broadcast audience, can affect the public as well, as when network clipping removes a required sponsorship identification announcement. Blair-Post/Newsweek contend that as to certain "gray area" practices which may or may not relate to program performance (and given "good faith doubt as to whether particular practices do reflect on broadcast qualifications"), the Commission should take cognizance only of those practices which have been "designated in rules, policy statements or adjudications as being relevant to evaluation of a renewal application."

iii. *Conclusions Regarding Antitrust and Anticompetitive Commercial Practices.* 42. Initially, we are of the view that our examination of nonbroadcast commercial activity in the character context should be substantially revised.[44] Current policies require consideration of business activity that extends far beyond our specific regulatory concerns.[45] As we have observed previously, we no longer believe it appropriate to require the level of review of non-FCC activity currently required by the *Uniform Policy Statement.*[46] We find this analysis particularly persuasive in the context of nonbroadcast business misconduct, where the policies, concerns, and market incentives in other industries may be quite different from the broadcast industry. In this regard, anticompetitive activity in the nonbroadcasting context may not be predictive of an applicant's proclivity to be truthful and reliable.[47] Moreover, there is nothing in the Communications Act requiring a consideration of nonbroadcast related commercial activity in the context of our character determinations. In this regard, even adjudicated cases of anticompetitive activity, antitrust violations, or other types of nonbroadcast business misconduct would not necessarily be relevant to our specific concerns for truthfulness and reliability in the operation of a broadcast station.[48] Accordingly, with respect to nonbroadcast related activity, we shall limit our character inquiry to those adjudicated violations discussed previously.[49]

43. We believe that where broadcast related business misconduct rises to the level of an adjudicated violation of either anticompetitive or antitrust laws, then the Commission could consider the activity relevant to an applicant's character. Generally, where alleged anticompetitive activity does not constitute a violation of state or federal antitrust or anticompetitive laws we will not pursue the matter. Unless the Commission has adopted a specific rule or policy prohibiting the commercial conduct at issue, we think licensees should not be penalized for engaging in activities that meet the requirements of law and that such conduct does not reflect upon their character. Although we once believed that the public interest standard warranted imposition of standards more stringent than those imposed by the antitrust laws, we no longer believe it is necessary to pursue matters that Congress itself has not seen fit to prohibit. For the most part, we believe that the potential to engage in monopolistic and anticompetitive practices is circumscribed in today's competitive market. However, we note that concerns with anticompetitive and antitrust activity in broadcasting have occupied a unique position in the Commission's regulatory scheme.[50] These concerns have been expressed not only in the context of specific rules, but also as elements in those areas involving discretionary determinations by the Commission.[51] Because of this unique position, violations of anticompetitive and or antitrust laws in the broadcast context may have a potential bearing on an applicant's proclivity to comply with the Commission's rules and policies. As a result, we believe it is appropriate to distinguish broadcast related antitrust and anticompetitive behavior from other types of business misconduct for the purposes of determining an applicant's basic character qualifications.[52]

44. While such activity may have a potential bearing on an applicant's character, we do not believe it appropriate or necessary to engage in the initial investigation or enforcement of the antitrust laws.[53] As we have

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[43] *Citing, inter alia, National Broadcasting Company* v. *United States*, 319 U.S. 190, 222–224 (1943); *Metropolitan Television Company* v. *FCC*, 289 F.2d 874, 876 (D.C. Cir. 1961); *Mansfield Journal Co.* v. *FCC*, *supra* note 28, at 33; section 313 of the Communications Act of 1934, as amended; and "the legislative history of the Radio Act of 1927 and the Communications Act of 1934."

[44] In this context non-broadcast activity describes business conduct which is not directly related to the business of broadcasting. Alternatively, broadcast related activity describes commercial activity which occurs in the course of operating or running a broadcast station.

[45] *See Uniform Policy Statement*, *supra* note 6, at 404. Indeed, the Commission's concerns with the monopolistic practice in other industries appears to have been originally founded on specific concerns with the monopolistic practices of the motion picture industry and its effect on the newly emerging television industry. *Id.* Such concerns are no longer appropriate in the current communications marketplace.

[46] *See supra* text at para. 33.

[47] The lack of predictability of nonbroadcast anticompetitive activity was amply demonstrated in the Commission's *Westinghouse I* decision. *See Westinghouse I*, *supra* note 23.

[48] We recognize our obligations pursuant to section 313(b) of the Act relative to refuse a license or construction permit to applicants whose license has been revoked by the courts for antitrust violations. This section, however, does not require consideration of nonbroadcast antitrust activity in the character context where a court has failed to revoke an applicant's license. In this regard, we note that the Commission's primary responsibility has always been to promote competition in the broadcast industry. *See* 47 U.S.C. 313(a) (1984) (all laws of United States relating to unlawful restraints and monopolies are applicable to radio); 47 U.S.C. 311 (1950) *amended* Pub. L. No. 554, 66 Stat. 711 (1952) (section formerly required Commission to refuse to grant a license to any applicant found guilty by a Federal Court to have unlawfully monopolized radio communication even where the court did not revoke a license); 15 U.S.C. 21 (granting authority to the Commission to enforce compliance with the Clayton Act where applicable to common carriers engaged in radio transmission of energy).

[49] *See supra* paras. 35–37.

[50] Indeed, concerns over potential monopolistic practices in broadcasting were a significant force behind the Communications Act and subsequent regulatory policies. *See e.g., National Broadcasting Co.* v. *U.S.* 319 U.S. 190, 222–224 (1943). *See also: Memorandum Opinion and Order* in Gen. Doc. 83–1009, 100 FCC 2d 74 (1985) (discussing competitive concerns in the rule making context).

[51] For example, in 1952 Congress amended section 311 of the Communications Act by striking language which had previously authorized the Commission to revoke a license where a licensee was found to be guilty of violating the antitrust laws regardless of whether the court ordered such revocation. In eliminating this provision, Congress noted that the Commission's authority to examine antitrust activity in the character context was not changed by the amendment. *See* Sen. Rep. No. 44, 82 Cong., 1st Sess., January 25, 1951; *Communications Act Amendments*, Pub. L. No. 554, 66 Stat. 711 (1952).

[52] We recognize, of course, that our consideration of antitrust or anticompetitive violations in the context of broadcasting differs from the policy considerations which arise with antitrust or anticompetitive violations of other Commission licensees. In this regard, the policy concerns regarding tariffs and rate making may justify different treatment of these issues. *See* e.g. *Notice of Proposed Rulemaking*, in CC Docket No. 85–64, FCC 85–120, released May 3, 1985. Moreover, the Commission has recognized that the policies generally underlying our character inquiry in the broadcasting context are different from those which are raised in the common carrier context. *See Arizona Mobile Telephone Co.*, FCC 83–557, 53 RR 2d 1001, 1017–1018 (April 13, 1983). (Character considerations involving tax liens and judgments do not bear the same significance for CARs carriers as they would in broadcast proceedings).

[53] While the Commission has the authority to investigate anticompetitive activity which falls

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observed in the *Underbrush* proceedings, other government agencies—most notably the Department of Justice and the Federal Trade Commission—have been given primary responsibility in policing antitrust and anti-competitive activity.[54] In addition, individuals or corporations can bring lawsuits alleging violation of antitrust or anticompetitive laws. In this regard, we are of the view that, for the purposes of a character determination, consideration should be given only to adjudications involving antitrust or anticompetitive violations from a court of competent jurisdiction, the Federal Trade Commission, or other governmental unit charged with the responsibility of policing such activity.[55] We find that this approach strikes an appropriate balance between the need to consider the relevancy of such activity, our desire not to duplicate the adjudicative functions of the courts or other government agencies and our concern with the basic fairness of our proceedings to participating litigants.

d. *Underbrush considerations.* 45. In the past several years, the Commission has undertaken, in its broadcast "Underbrush" proceeding in MM Docket 83–842,[56] a systematic review of those policies and rules which were "no longer warranted or required by the public interest." In eliminating certain of these policies the Commission stated that it would no longer consider certain areas of misconduct in the first instance but rather that such matters should be treated by more appropriate governmental agencies or the courts. In so doing, however, the Commission acknowledged that it may consider the impact of adverse agency or judicial findings regarding the practices in question upon an applicant's character qualifications[57] and, further, left open to this instant character proceeding the ultimate effect to be given to any such adverse adjudications involving once proscribed activities.[58]

46. Accordingly, we shall here set forth our conclusion with respect to this matter. Engaging in underbrush type activities may give rise to various causes of actions both civil and criminal. We do not find it necessary or appropriate to expand upon the range of relevant non-FCC behavior described above. Because engaging in those activities are no longer specifically proscribed by our policies, we will consider the misconduct as being relevant to an applicant's character qualifications only where there has been an adjudication and that adjudication falls into one of the above described categories of non-FCC behavior. For example, engaging in ratings distortion could be considered relevant to an applicant's character to the extent that it rose to the level of an adjudication violation of the antitrust or anticompetitive laws. Such activity may also be considered if it resulted in a criminal conviction or an adjudication of fraud before another government agency. Of course where such activity constitutes a violation of existing rules and policies then such misconduct would be considered as FCC related behavior.

47. If in the future the Commission decides to eliminate policies relating to business practices, then at that time, such practices would be treated no differently than other non-FCC misconduct for character purposes. We do not believe any parties have made a showing that broadcasters should be subject to extraordinary penalties through the licensing process absent a Commission finding that our direct control of such practices is necessary to the regulatory scheme.[59]

e. *Other matters concerning non-FCC misconduct.* 48. It is our current practice to ordinarily refrain from taking any action on non-FCC misconduct prior to adjudication by another agency or court.[60] In the future, our current practice will be our actual policy. We will not take cognizance of non-FCC misconduct involving criminally fraudulent misrepresentations, alleged criminal activity and antitrust or anticompetitive misconduct unless it is adjudicated.[61] In this regard, there must

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short of an adjudicated violation of the antitrust or anticompetitive laws. *See e.g., U.S.* v. *RCA*, 358 U.S. 334 (1954); *Philco Corp.* v. *FCC*, 293 F.2d 864 (1961), we do not believe that independent consideration of such misconduct is required by the Communications Act prior to an adjudication before an appropriate forum. We believe these decisions must be considered in the context of the Commission's regulatory posture at that time. In this regard, we view the Court's statements concerning consideration of unadjudicated antitrust allegations as affirming the Commission's previous regulatory scheme and not as a statutory requirement.

[54] *See infra* para. 45.

[55] In this regard, we note that our consideration will include violations of the Sherman Antitrust Act, Clayton Antitrust Act, Robinson-Patman Act, Federal Trade Commission Act as well as similar state antitrust and anticompetitive statutes.

[56] *See, generally, Elimination of Unnecessary Broadcast Regulations*, FCC 83–339, 45 FR 36254 (August 10, 1983) (hereinafter *Underbrush I*); *Elimination of Unnecessary Broadcast regulations and Inquiry into Subscription Agreements Between Radio Broadcast Stations and Music Format Companies*, MM Docket No. 83–842 and No. 19743; FCC 83–375, 48 FR 49852 (October 28, 1983) (hereinafter *Underbrush II*); *Notice of Proposed Rule Making* in MM Docket No. 83–842, FCC 83–376, 48 FR 49879 (October 28, 1983); *Report and Order* in MM Docket No. 83–842, FCC–388, 49 FR 33264 (August 22, 1984) (hereinafter *Underbrush III*); *Policy Statement and Order* in MM Docket No. 83–842, FCC 85–24, 50 FR 6264 (February 14, 1985) (hereinafter *Underbrush IV*); *Policy Statement and Order* in MM Docket No. 83–842, FCC 85–25, 50 FR 5583 (February 11, 1985) (hereinafter *Underbrush V*); and *Second Notice of Proposed Rule Making* in MM Docket No. 83–842, FCC 85–26, 50 FR 5792 (February 12, 1985) (hereinafter *Underbrush VI*).

[57] Examples of formerly proscribed activity which could possibly result in adjudications by other tribunals would be improper use of coverage maps (formerly § 73.4090); improper use or distortion of audience ratings (formerly §§ 73.4035 and 73.4040); promotion of nonbroadcast business (formerly § 73.4225); etc. We note, however, that not all of the policies eliminated in the Underbrush proceedings would necessarily trigger liability under other laws, in that they were FCC-created and have no counterparts in other laws. For example, elimination of our policies with respect to foreign language broadcasts, music format service agreements, repetitions broadcasts, off network programs, polls and sirens or sound effects in advertising would not generally trigger liability under other laws. *See Underbrush II.*

[58] In this connection, *see, also, Amendment of § 73.1202(b)(2) of the Commission's Rules—Additional City Identification*, 48 FR 51304 (1983), at paragraph 13, n. 6.

[59] At the present time, the Commission has before it a *Second Notice of Proposed Rulemaking* involving its rules concerning fraudulent billing, network clipping and joint sales policies. *See Second Notice of Proposed Rulemaking* in MM Docket No. 83–842, FCC 85–26, 50 FR 5792 (February 12, 1985). Thus, participating in these types of misconduct would be considered as FCC related behavior. However, if these specific directives were eliminated, then such conduct could be relevant to an applicant's character only to the extent that it falls into one of the specific categories of non-FCC behavior described above. The present proceeding in no way prejudges the outcome of this pending matter.

[60] The Commission acknowledges that there may be circumstances in which an applicant has engaged in nonbroadcast misconduct so egregious as to shock the conscience and evoke almost universal disapprobation. *See e.g., supra*, comments of ABC at note 29. Such misconduct might, of its own nature, constitute *prima facie* evidence that the applicant lacks the traits of reliability and/or truthfulness necessary to be a licensee, and might be a matter of Commission concern even prior to adjudication by another body. The Commission cannot presently contemplate the manner in which circumstances might arise, and stresses that such considerations would come into play only with regard to a specific application involving specific misconduct.

[61] The Commission recognizes that there may be circumstances in which an applicant has engaged in repeated, willful violations of law amounting to a flagrant disregard for complying with the law. Such adjudicated misconduct might, of its own nature, provide sufficient evidence that the applicant lacks the traits of reliability and/or truthfulness necessary to be a licensee. In the rare instances where the Commission is confronted with such a record, consideration should be given to the circumstances surrounding the violations. In this regard, we believe that not only must there be a pattern of adjudicated violations, but the types of violations must reflect a significant departure from established legal authority. Moreover, the applicant must have either actual knowledge that the conduct constitutes a clear violation of existing law or the nature of the violation itself must give rise to a

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be an ultimate adjudication by an appropriate trier of fact, either by a government agency or court, before we will consider the activity in our character determinations.[62] Such adjudications will be considered for character purposes during the pendency of an appeal.[63] In addition, consent decrees will not be considered as adjudicated misconduct for the purposes of assessing an applicant's character.[64] Finally, we will not take cognizance of these adjudicated non-FCC acts as to any individual or entity whose ownership or positional interest in an applicant is not cognizable under our multiple ownership rules. Those interests which are believed by the Commission to have the potential to influence or control the operations of a station are recognized and attributed under the multiple ownership rules. We see no reasons to consider as bearing on character qualifications the participation in an applicant of an individual or entity whose stake in the applicant is otherwise seen as inconsequential with regard to the potential to influence station operations.

49. The Commission finds no basis upon which to treat new nonlicensee applicants differently than existing broadcasters with regard to the scope of consideration given non-FCC misconduct.[65] We do not believe it reasonable to go beyond the above mentioned limits and treat other misconduct which we have deemed irrelevant to the character qualifications of existing broadcasters as bearing upon the character of new nonlicensee applicants simply because no other evidence is available. Thus, the same policy will apply to new nonbroadcaster applicants as to existing broadcasters. While the Commission understands Citizens' and UCC's concerns regarding the complexity of forfeiture and revocation proceedings, we conclude that the costs imposed by such proceedings in the limited instances in which they might be found necessary are clearly outweighed by the benefits of avoiding regular, inappropriate reviews of an applicant's non-FCC misconduct. In this regard, we believe that our revocation proceedings will serve as an appropriate remedy in those situations where the misconduct has been adjudicated.[66] We note that the processing of the errant broadcaster's first renewal application will also afford the opportunity to consider any problems in broadcaster operations. Given that we will continue to consider adjudicated non-FCC misconduct as to both new applicants and existing broadcasters before a government agency, we will not at this time delete from Commission broadcast application forms all questions regarding adjudicated non-FCC misconduct. The questions will, however, be appropriately modified.

50. In taking action herein, we are mindful of the *dicta* in *Community Television of Southern California* v. *Gottfried*[67] in which the Court suggested that the Commission would be obligated to consider the possible relevance of an adjudicated violation of *any* Federal statute by a licensee "in determining whether or not to renew the lawbreaker's license." In making this statement, the Court referred to the Commission's own explanation of our past policy. It therefore appears that the Court's statement is reflective of our policy rather than a definitive judicial determination that such Commission review is required. Similarly, we are aware that cases such as *TV–9, Inc.* v. *FCC*,[68] suggest that basic character qualifications may be put in issue even by unadjudicated violations of [criminal] law. We find merit to the view expressed in NAB's comments that the Court's statement in *TV–9* was made "in the context of the Commission's traditional policies on character qualifications," and was not an adjudication of whether the Communications Act permits or warrants new and different policies. We view related judical holdings in a similar manner.[69] The propriety of making changes in the manner in which the Commission exercises its authority in the licensing process has long been recognized by the Courts, it being acknowledged that "experience often dictates change."[70]

51. While it has been held that "an agency charged with promoting the 'public interest' in a particular substantive area may not simply 'ignore' the policies underlying other federal statutes,"[71] it has also been determined that "the use of the term 'public interest' in a regulatory statute is not a broad license to promote the general welfare. Rather, the words take meaning from the purposes of the regulatory legislation."[72] Thus, while it may be appropriate for the Commission to consider the relationship of the policies underlying other Federal statutes to effectuation of the policies behind the Communications Act, the inclusion of a public interest standard in the Communications Act did not automatically give the Commission "either the authority of the duty to execute numerous other laws."[73]

52. As a general proposition it is clear that we have the discretion to decide whether to approach these matters through rulemaking, individual adjudication, or a combination of the two.[74] Issuance of the instant *Policy Statement* as guidance certainly falls within the bounds of the discretion. Thus, it appears fully within our authority to determine in the instant proceeding that only a relatively focused inquiry of non-FCC misconduct will be considered in the future as bearing on

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irrefutable inference that the applicant knew it was violating the law. In making these determinations it may be appropriate to consider whether the violation resulted from an incorrect legal interpretation or whether the violation represented a knowing decision to ignore legal authority.

[62] We believe it appropriate to consider only those adjudications made by an ultimate trier of fact. Tribunals whose factual determinations may be reviewed *de novo* will not be considered unless the time for taking such review has expired under the relevant procedural rules.

[63] In the appropriate circumstances, we may condition any Commission action on the outcome of an appeal. The impact of an appeal on an applicant's character determination will depend, *inter alia*, on a consideration of the issues which are the subject matter of the appeal. *See* Fed. R. Evid. 609(e).

[64] We do not believe it appropriate to consider consent decrees, entered into in the civil context, for the purpose of determining character qualifications. The act of consenting to such an agreement is not a wrongful act and does not necessarily imply wrongful conduct. The existence of a consent decree, by itself, is not necessarily probative on the issue of an applicant's character. *See Katy Communications* 87 FCC 2d 764(1984). With regard to convictions based on a plea of *nolo contendere*, however, we are of the view that such convictions could be considered relevant for the purposes of our character examination. *See, U.S.* v. *Williams*. 642 F.2d 136 (5th Cir. 1981).

[65] While the scope of relevant non-FCC behavior is the same for both new licensees and existing broadcasters, the ultimate significance of such misconduct may be different. For example, an incumbent's past record of compliance with our rules may, in certain circumstances, be balanced against any non-FCC misconduct. *See infra* at para. 102.

[66] Our focus on adjudicated misconduct does not limit the Commission's discretion to condition the grant of a license or permit on the outcome of related court or government agency proceedings, where such action is deemed appropriate.

[67] 459 U.S. 498, 103 S. Ct. 885, 74 L. Ed. 2d 705, 716 (1983).

[68] 495 F.2d 929 (D.C. Cir. 1973), *cert. denied*, 419 U.S. 986 (1974).

[69] *See*, for example, *Central Florida Enterprises, Inc.* v. *FCC*, 598 F.2d 37, 45, 52 (D.C. Cir. 1978) ("*Central Florida I*").

[70] *Pinellas Broadcasting Company* v. *FCC*, *supra*, note 18 at 206.

[71] *McLean Trucking Co.* v. *United States*, 321 U.S. 67, 80 (1944), as discussed in *Community Television of Southern California* v. *Gottfried*, *supra* note 67, at 716.

[72] *National Association for the Advancement of Colored People* v. *Federal Power Commission*, 425 U.S. 662, 669 (1976) (hereinafter "*NAACP v. FPC*").

[73] *Id.*

[74] *See SEC* v. *Chenery Corp.*, 332 U.S. 194, 202–203 (1947).

character qualifications, and that such misconduct must have been adjudicated by an appropriate agency or court before Commission consideration will occur. It is our determination that it is this range of non-FCC misconduct which, for character qualifications purposes, is relevant to the regulatory purposes of the Communication Act.[75]

4. Issues Regarding FCC-Related Misconduct

53. In the previous section of this document, we discussed the types of non-FCC misconduct which might be considered as raising questions regarding an applicant's character qualifications. Attention must also be given to the manner in which FCC-related misconduct of those with a record as licensees will be treated for qualifications purposes.

a. *Violations of the Communications Act, Commission Rules and Policies.* 54. In the past, the Commission has in its decisions described the import of violations of the Communications Act or our rules and policies other than those bearing on citizenship and technical qualifications in several different ways. While some infractions have in fact been discussed as bearing on "character qualifications", others have been described as having an impact on the applicant's "fitness." Some violations have been said to bear on "qualifications," but the type of qualifications in question has been left unidentified.

55. In this *Policy Statement*, the Commission has determined that the relevant character traits with which it is concerned are those of "truthfulness" and "reliability." Regardless of the manner in which we have historically described the matters before us, our concerns when reviewing FCC-related misconduct in the licensing context have clearly had a relationship to those two traits; we have questioned whether the licensee will in the future be likely to be forthright in its dealings with the Commission and to operate its station consistent with the requirements of the Communications Act and the Commission's Rules and policies.

56. From this perspective, it appears that as a general matter any violations of the Communications Act, Commission rules or Commission policies can be said to have a potential bearing on character qualifications. As noted in paragraph 26, *supra*, in the NOI we specifically solicited comment as to whether violations of the Act or our rules or policies should bear on the qualifications of existing licensees. The thrust of the comments received is that these are matters which are predictive of licensee behavior and directly relevant to the Commission's regulatory activities. Thus, we will in the future treat violations of the Communications Act, Commission rules or Commission policies as having a potential bearing on character qualifications.

57. As indicated in paragraph 26, *supra*, in the NOI we also raised specific questions as to whether such FCC-related misconduct as "misrepresentation or lack of candor to the Commission, deception or defrauding of the broadcast public, and abuse of broadcast facilities through fraudulent or anticompetitive commercial practices" should be considered as qualifications issues bearing on an applicant's likely future broadcast performance. We believe it appropriate to give misrepresentation specific consideration in the context of this *Policy Statement*. The act of willful misrepresentation not only violates the Commission's Rules; it also raises immediate concerns over the licensee's ability to be truthful in any future dealings with the Commission. Other types of FCC-related violations, although appropriately treated as possibly predictive of future behavior, are not as proximately relevant to the core concern of truthfulness as is the act of willful misrepresentation. Thus, with regard to this larger class of FCC-related violations we find it appropriate and sufficient to treat any violation of any provision of the Act, or of our Rules or policies, as possibly predictive of future conduct and, thus, as possibly raising concerns over the licensee's future truthfulness and reliability, without further differentiation.[76]

b. *Misrepresentation or Lack of Candor to the Commission & Abuse of Process.* i. *Issues Raised.* 58. In the NOI, the Commission observed that "our scheme of regulation rests upon the assumption that applicants will supply [the Commission] with accurate information." We remarked that "[d]ishonest practices threaten the integrity of the licensing process," and requested comment on whether misrepresentation and lack of candor should continue to be viewed "as serious breaches of the trust we should place in the broadcaster."

ii. *Comments on Misrepresentation.* 59. A variety of responses to this inquiry were received. While commenters generally agree that these matters should continue to be considered, a number of commenting parties argue that misrepresentations which are not significant should not lead to denial of license. BML expresses surprise that the Commission even questioned whether it should continue to consider misrepresentation or lack of candor as breaches of trust.

iii. *Conclusions Regarding Misrepresentation.* 60. As we have stated, the trait of "truthfulness" is one of the two key elements of character necessary to operate a broadcast station in the public interest. The Commission is authorized to treat even the most insignificant misrepresentation as disqualifying.[77] While the Commission has considered mitigating factors, if any, in drawing conclusions regarding the treatment of misrepresentation in a case,[78] the choice of remedies and sanctions is an area in which we have broad discretion.[79]

61. We believe it necessary and appropriate to continue to view misrepresentation and lack of candor in an applicant's dealing with the Commission as serious breaches of trust. The integrity of the Commission's process cannot be maintained without honest dealing with the Commission by licensees. Given the broad discretion in this area allowed us by the case law, we are understanding of broadcaster desires that "immaterial" misrepresentation not lead to disqualification. While we do not believe it appropriate to renounce the authority we possess in this area, Commission policy will ordinarily be to consider all the facts of a case in making

[75] This is not to say that the Commission will not consider the relationship to the Communications Act of other Federal statutes not involving such misconduct, but only that such considerations should ordinarily occur in the rulemaking context rather than in the contemplation of character qualifications issues in individual cases. Should our future experience indicate that we have erred herein in narrowing the range of non-FCC misconduct to be considered for character purposes, we would of course be prepared to revisit this issue.

[76] Although we intend to treat any violation of FCC statutory or regulatory requirements as raising character concerns, not all violations are equally predictive. As discussed more fully *infra*, the nature of the violation, the circumstances surrounding it, and other pertinent considerations may attenuate or amplify its relevance to considerations of future reliability and truthfulness.

[77] "The fact of concealment may be more significant than the facts concealed. The willingness to deceive a regulatory body may be disclosed by immaterial and useless deceptions as well as by material and persuasive ones." *FCC* v. *WOKO, supra*, note 10, at 227. *See, also, Leflore Broadcasting Company, Inc.* v. *FCC, supra* note 38, at 461–462.

[78] *See*, for example, *Janus Broadcasting Company*, 78 FCC 2d 788, 791–793 (1980).

[79] Further, in cases of misrepresentation we are not required to consider the station's past program performance. *Continental Broadcasting, Inc.* v. *FCC*, 439 F.2d 580, 583–584 (D.C. Cir. 1971), *cert denied*, 403 U.S. 905 (1971). *See, also, Independent Broadcasting Co.* v. *FCC*, 193 F.2d 900, 903 (D.C. Cir. 1951), *cert. denied*, 344 U.S. 837 (1952).

decisions as to the disposition of matters involving misrepresentation or lack of candor.[80]

iv. *Conclusions Regarding Abuse of Process.* 62. As we suggested in the NOI, at 847, n. 35, such misconduct as the filing of strike applications and harrassment of opposing parties, which threatens the integrity of the Commission's licensing processes, will also continue to be considered as bearing on character. Willful or repeated violation of the Commission's *ex parte* rules also falls within this "abuse of process" area.

c. *Deceptive or Fraudulent Programming.* i. *Issues.* 63. Another topic specifically addressed in the NOI is the Commission's concern that "broadcasters do not abuse the licensing privilege conferred on them through deceptive or fraudulent programming." Deceptive or fraudulent programming, the Commission commented, goes to the essence of the trust placed in a broadcaster to provide quality service oriented to the needs of its community. Thus, we tentatively concluded that "such unethical broadcasting conduct as fraudulent contests, deceptive advertising, news staging and news distortion" should continue to be treated as "adverse reflections on an applicants qualifications to serve the public interest." However, we questioned whether all such misconduct should be given equal weight in evaluation of a renewal applicant's qualifications, and asked whether matters involving such misconduct as deceptive advertising should be referred to other agencies rather than scrutinized in Commission proceedings.

ii. *Comments.* 64. Comment specifically directed to the deceptive and fraudulent programming area was somewhat limited. CBS believes that it might be appropriate for the Commission to consider a broadcaster's knowing presentation of deceptive advertising or other deceptive programming as a renewal matter, but stresses that the broadcaster "should not be expected to function as a mini-FTC." NBC comments that a broadcaster's alleged involvement "in a persistent pattern of widespread and willfully deceptive programming could well have a direct impact on its service to the public," and thus could be relevant in the renewal context if it was undertaken "with the knowledge and approval of management" and no remedial steps were taken to avoid recurrence. BML takes the position, however, that merely by asking the questions cited in paragraph 30 above, the Commission can "invite licensees to adopt a marginal standard of conduct" rather than a standard commensurate with licensees' status as "fiduciaries for the public." BML states that the Commission's question regarding the possibility of weighing different misconduct differently "leads to a Talmudic dissection of whether one kind of fraud is better than another."

iii. *Conclusions Regarding Deceptive or Fraudulent Programming.* 65. Having again considered our earlier, tentative conclusions in this area, the Commission remains convinced that the manner in which we currently treat such broadcaster misconduct as fraudulent contests,[81] news staging and news distortion [82] should not be modified at this time. Because we have retained these specific policies, engaging in such behavior will be considered as FCC related misconduct. We believe it necessary to continue to weigh such matters as the involvement of station management in the acts in question, and attempts to prevent recurrence of improper activity and other acts taken in mitigation of such acts, on a case-by-case basis.[83] It appears necessary that the facts of each case be separately considered. While this weighing process will include consideration of the significance of the particular act in question, we do not, upon reflection, believe it possible or appropriate to establish a detailed schedule of weights or differential treatment to be accorded particular types of improper conduct.

66. As to deceptive advertising, we concur in CBS' view that there must be a knowing presentation of such material by the broadcaster in order for the action to be considered a licensing qualifications matter. Thus, there must in some fashion be active participation of the broadcaster in perpetrating the deception upon the audience, either by its actual involvement in the knowing creation of a deliberately fraudulent ad or by awareness of Federal Trade Commission ("FTC") or other final governmental action involving the advertisement in question. Complaints which require determinations as to whether certain advertising actually is fraudulent will, as has been our practice, ordinarily be referred to the FTC in the first instance. The question of whether a licensee knowingly participated in creation of a deliberately fraudulent ad may be similar to that of deceptive programming, and may normally be acted upon directly by the Commission. Of course the Commission retains discretion to refer such matters to the FTC as appropriate. We find this approach consistent with the Commission's recent action in *Underbrush V* where the unreasonably burdensome investigatory requirements imposed on broadcasters pursuant to former § 73.4040 were eliminated.[84]

67. We note, however, that the Commission recently eliminated, in its Underbrush proceedings, certain other policies which may be considered similar to deceptive or fraudulent programming. In this regard, we note that any type of programming, including those types of programs such as astrology programs, foreign language broadcasts, etc., could be presented in a manner which would run afoul of our existing prohibitions against news distortion or fraudulent programming. To the extent such programming is used in a manner inconsistent with those policies regarding news distortion, news staging or fraudulent advertising, we could consider such activity as FCC misconduct. Alternatively, if such activity were not used in a manner inconsistent with these stated policies, but resulted in an adjudicated violation of the type previously discussed under non-FCC misconduct, then the behavior could be considered relevant to an applicant's character.

C. Misconduct by Corporate Applicants

1. Questions Regarding Corporate Applicant Misconduct

68. A major area of concern in the NOI was misconduct by corporate applicants. In its fourth question, the NOI asked:

(d) How should the Commission treat misconduct by a corporate applicant?

The Commission observed in the NOI that we had historically held "corporate licensees responsible for the behavior of those individuals who operate them."[85] We noted, however, that unlike a sole proprietorship or partnership, in which the owners are often involved in the daily operation of the station, corporate shareholders frequently place their trust

[80] *See supra*, text at para. 35, as to the treatment to be given misrepresentation or lack of candor before another unit of government. *See infra*, paras. 115–118, regarding our action as to BC Docket No. 78–106.

[81] *See, for example, Janus Broadcasting Company, supra* note 78. *See, also,* § 73.1216 of the Commission's Rules.

[82] *See, for example, American Broadcasting Companies, Inc.*, 52 RR 2d 1378 (1982); *Walton Broadcasting, Inc.*, 78 FCC 2d 857 (1980). *See, also, Southwest Texas Public Broadcasting Council*, 85 FCC 2d 713 (1981).

[83] For further discussion of these issues, *see infra* paras. 78 and 102–106.

[84] *See Underbrush V, supra* note 56.

[85] Citing *Independent Broadcasting Co.*, 43 F.C.C. 492, 494 (1950).

in officers and directors to actively manage their broadcast investments. Further, the individuals who are officers, directors and shareholders may all change, yet the corporate entity will continue. We stated that this flux made it difficult to ascribe a "character" to a Corporation. However, we noted that Commission policy nonetheless holds that we might "find that a corporate applicant lacks character and deny its application, when the individuals in corporate management technically responsible for any misconduct have long since departed."

69. The Commission stated that as existing policy might "punish innocent shareholders, we were soliciting comment as to whether corporate misconduct might be "neutralized" if those managers responsible for corporate misconduct are removed. The Commission also asked for comment on how, if we adopted such a policy, we might act to prevent corporate owners from delegating all responsibility for station operation to employees, thus avoiding knowledge of or responsibility for what occurred. We further questioned what action should be taken in instances in which "the corporate managers who are responsible for wrongdoing are also the controlling stockholders of the corporate licensee."

70. Finally, the Commission requested comment on "whether corporate licensees should be made to answer for the bad acts of controlling corporate entities, their management and their principals when that misconduct is relevant to the licensee's broadcast operations." In this regard, we tentatively concluded that the crucial factors were whether the controlling company exerted or might exert significant influence over the broadcast operations in question, and whether "the controlling company previously has involved the broadcast subsidiary in improprieties."

2. Comments on Corporate Misconduct

71. In the comments received in response to these questions, the threshold issue raised is the type of corporate conduct to be considered relevant to Commission character qualifications. A related point is the level of corporate operations at which the misconduct occurs. Thus, such parties as CBS, NBC, ABC, Tribune, American Legal Foundation ("ALF"), "Station Licensees"[86] and Blair/Post-Newsweek generally believe the Commission should not consider nonbroadcast corporate misconduct as bearing on qualifications. With regard to the parent/subsidiary relationship, AFC comments that misconduct by any of its 450 employees engaged in the insurance business in Japan could not possibly affect the operation of its broadcast stations.

72. "Station Licensees" expand upon this point by noting that the Commission has held "that it will not deem nonbroadcast misconduct by a licensee to be material if it occurred in corporate activity unrelated to the corporation's broadcast facilities." "Station Licensees" ask that we affirm the policy applied in 1980 in *Westinghouse II, supra*, in which a parent corporation was involved in "criminal representations to agencies of the federal government" other than the Commission. In that case, the Commission held that the parent corporation's misconduct was not material to an assessment of the broadcast subsidiary's qualifications to be a licensee, given the lack of criminal involvement of parent corporation personnel in a position to influence the broadcast subsidiary, and lack of the parent's involvement in the broadcast subsidiary's daily operations.[87]

73. NCCB concurs in the view that where wrongdoing occurs in a separate subsidiary and does not involve the parent coporation's top management, it should not affect the broadcast subsidiary. A similar stance is taken by UCC. However, NCCB urges that wrongful activity by a parent corporation itself be considered "as predictive of misconduct involving the broadcast subsidiary." Both NCCB and Citizens state that such matters as the existence of interlocking officers or directors and the degree of integration of subsidiary/parent operations are factors to be considered in determining whether the parent's behavior will have a negative impact on the subsidiary's broadcast operations.[88]

74. As to the manner in which conduct of individuals associated with the licensee is to be treated, several commenters state that there are a number of factors involved which must be considered on a case-by-case basis. For example, AFC suggests that if a station manager is involved, such factors as the care used in his or her selection, "the extent and sufficiency of safeguards used in supervising station operation and preventing wrongdoing," possible prior knowledge or subsequent ratification of misconduct by corporate officers, and those steps, including removal of the wrongdoer, taken to remedy the misconduct or prevent recurrence are all factors to be considered.

Similarly, "Station Licensees" state that whether the employee misconduct was contrary to management instructions is a relevant consideration.[89] However, CBS argues that licensees should not be expected to routinely remove personnel, absent some judgments, at least within the corporation, as to their responsibility for the improprieties. CBS states that "[i]f a contrary approach is followed, licensees may feel pressured to remove executives not because of their own evaluation that they have been guilty of wrongdoing, but out of fear that the Commission may take a different view and draw negative inferences from the licensee's failure to take 'prompt' action to dismiss those employees." A number of parties argue that any misconduct being considered should, as is currently the case, be balanced against the broadcast record of an existing licensee as the Commission makes its decision.

75. Citizen's contends that removal of the management responsible for the misconduct in question is an inadequate deterrent to future misconduct and an inadequate punishment for present misdeeds, although it finds that on rare occasion removal of the offending employees may be enough to protect the public interest. UCC observes that the principals of a station are responsible and should not be able to shift that responsibility by pointing a finger at an aberrant employee. NCCB argues that the Commission should not allow "neutralizing" of misconduct if the individual in question is a majority stockholder, stockholder and director, or otherwise in *de facto* control of the corporation, while NBMC states that qualification of individual stockholders, officers and directors cannot be separated from those of the corporation, as they are deemed the alter ego of the corporation. NBMC contends that the mere fact that management has changed or seemingly innocent individuals will be affected should not immunize the corporation from the consequences of misconduct.

[86] "Station Licensees" are a group of licensees represented by the law firm of McKenna, Wilkinson & Kittner. The composition of the group is fully set forth in Appendix "A".

[87] "Station Licensees" find this decision consistent with such earlier cases as *General Electric Co., supra* note 34 and *Westinghouse I, supra* note 23.

[88] Both Citizens and NCCB cite the Commission's approach in *RKO General, Inc., supra* note 34, as an example of the manner in which such situations should be addressed.

[89] Other parties with similar views include NBC and NRBA.

3. *Conclusions on Corporate Applicant Misconduct*

a. *Types of Misconduct To Be Considered.* 76. It is the Commission's intention that applicants be treated as consistently as is possible with respect to character qualifications, with the minimum necessary regard given to the legal form in which they do business. Thus, we find as an initial matter that the same types of misconduct should be considered when corporate applicants are involved as when the applicant is a sole proprietorship or partnership.[90] The same violations of the Communications Act, Commission rules or Commission policies and adjudicated cases of relevant non-FCC misconduct have a bearing on the qualifications of an applicant entity regardless of the form in which it does business.[91]

77. It is clear that an adjudicated finding against the applicant itself would meet this test. However, a more difficult question concerns the relationships between individual and corporate miscounduct. As we indicated in the NOI, and as the comments make clear, the determination of how to treat misconduct, both FCC-related and non-FCC related, when the actual wrongdoer is, variously, and applicant's employee, officer, director or shareholder, the parent corporation of the applicant (or any of the parent's personnel), or another subsidiary of a common parent (or the subsidiary's personnel) is a more complex task.

b. *Employee Misconduct.* 78. A corporation must be responsible for the FCC-related misconduct occasioned by the actions of its employees in the course of their broadcast employment.[92] To hold otherwise would, *inter alia*, encourage corporate owners to improperly delegate authority over station operations in order to "neutralize" any future misconduct. Our review of the record leads us to conclude that (as to both FCC and non-FCC misconduct) mitigating factors must be considered on a case-by-case basis. Thus, whether the effect of misconduct can be tempered by removal of the managers responsible for the wrongdoing in question involves numerous considerations, including the care taken by the applicant prior to occurrence of the misconduct in question, including any special training given.[93] Merely standing back and waiting for disaster to strike or for the Commission to become aware of it will not insulate corporate owners from the consequences of misconduct. While we agree with CBS that licensees should not be expected to remove personnel without some internal judgments regarding responsibility for improprieties, we note that any internal investigations must be conducted with dispatch. As we indicated in paragraph 75, it is our intention to treat licensees consistently with respect to character qualifications. Thus, wrongdoing by corporate managers who are also controlling stockholders will be treated as though the individuals involved were sole proprietors or partners.

c. *Parent-Subsidiary Relationships.* 79. As to the parent/broadcast subsidiary relationship, we agree with "Station Licensees" that such situations as that found in *Westinghouse II, supra,*[94] should not be deemed relevant to the broadcast subsidiary's qualifications to be a licensee. As a general matter, however, if a close ongoing relationship between the parent and the subsidiary can be found, if the two have common principals, and if the common principals are actively involved in the day-to-day operations of the broadcast subsidiary, we will then consider the significance of the relationship of the non-FCC misconduct to the operation of the broadcast subsidiary. In this regard, we will focus on the actual involvement of the common principals in both the misconduct and in the day to day activities of the broadcast subsidiary. This standard will also be employed where the non-FCC misconduct of a non-broadcast subsidiary is being imputed to the parent corporation. In this context, however, we will consider mitigating factors similar to those described in paragraph 78 above. In addition, if the corporate parent is in any way involved in FCC-related misconduct, whether or not such misconduct involves the broadcast subsidiary, the bearing of that misconduct on the subsidiary's qualifictions would be considered.[95]

80. Question remains as to the treatment of wrongdoing by an employee, officer, director or shareholder of the parent corporation. With regard to non-FCC misconduct, we find it appropriate to follow the procedure determined to be proper for other broadcast applicants. Further, the individual involved in such acts must have an interest in the parent corporation which is recognized and attributed under the multiple ownership rules.[96] If the individual's role in the parent is not such as to confer an attributable interest, the Commission finds no basis on which to consider his or her nonbroadcast actions for character purposes. Finally, the individual must actually be involved in some fashion in the day-to-day operations of the broadcast subsidiary.

81. If these conditions are met, the Commission will consider the impact, if any, of the individual's relevant adjudicated non-FCC misconduct on the qualifications of the broadcast subsidiary. We find that FCC-related misconduct of those individuals associated with the parent corporation and also involved in subsidiary operations, occuring in the course of their employment, (whether or not involving a broadcast subsidiary) raises sufficient questions regarding the subsidiary's qualifications so that such matters will receive consideration. In such cases, the Commission finds that holding of an attributable interest by the individual is not necessary. While the impact of the individual's actions on daily broadcast operation may have been limited, the involvement of the individual in broadcast activity may raise a character question and warrants at least some exploration. Such factors as corporate efforts to remove the miscreant prior to Commission awareness of the wrong committed and to prevent recurrences will, of course, be considered in mitigation.

d. *Related Subsidiary.* 82. Engaging in the previously described non-FCC misconduct at a related subsidiary which results in an adjudication as to the subsidiary itself will require that there be principals shared with the broadcast subsidiary in order for the matter to be further considered.

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[90] *See* paras. 1–67.

[91] It is, however, the case that "corporate misconduct often can be cured by replacing management and directors, whereas individual malfeasants may not so easily change their spots." *RKO General Inc.* v. *FCC, supra* note 34 at 227, n. 33.

[92] Non-FCC misconduct will be considered in those circumstances discussed previously.

[93] Clearly, innocent shareholders will not in all cases have their investments protected under this scheme. Such shareholder exposure to risk appears unavoidable. See, in this regard, *Independent Broadcasting Co.* v. *FCC, supra* note 85. However, responsible shareholder efforts will be recognized. *See WIGO, Inc.*, 85 F.C.C. 2d 196, 207–213 (1981).

[94] *See* para. 69, *supra. See, also, Cowles Broadcasting, Inc.*, 86 F.C.C.2d 993, 997–1002 (1981), *aff'd sub nom., Central Florida Enterprises, Inc.* v. *FCC*, 683 F.2d 503, 508, n. 29 (D.C. Cir. 1982), *cert. denied*, 103 S. Ct. 1774, 76 L.Ed. 2d 346 (1983) ("Central Florida II").

[95] As discussed, *infra* at paras. 103–107, that the misconduct has occurred is not of itself dispositive of the final action to be taken by the Commission. Various other aspects of station operations must also be considered. As to the impact of FCC-related misconduct on other FCC-regulated services, *See Cablecom-General, Inc.*, 87 F.C.C. 2d 784 (1981).

[96] *See supra*, at para. 48.

Adjudications of individual acts occurring at a subsidiary will require a showing of the involvement of the relevant individual in the activities of the broadcast subsidiary, and the existence of an attributable interest in the broadcast subsidiary. FCC-related misconduct will be treated in the same fashion as that involving the parent-subsidiary relationship.

D. Misconduct and Multiple Owners

1. Questions Raised

83. Related to the treatment of corporate misconduct is the manner in which misconduct at one station owned by a multiple licensee is viewed as influencing the Commission's disposition of transactions involving other stations owned by that licensee. The NOI set forth two questions on this matter:

(e) What impact should a finding of misconduct at one station have on the Commission's treatment of other commonly controlled stations?

(f) What effect should misconduct at one station have upon a multiple-owner licensee's ability to acquire or assign other licenses?

84. The Commission observed in the NOI that it had historically "tried to determine whether, as a result of misconduct at the licensee's first station, the Commission had any reason to believe that there was a likelihood of the same or similar misconduct occurring in the future at the licensee's other stations."[97] We tentatively concluded that the determination in question depended on "the seriousness of the conduct at the first station as well as the licensee's past performance at each of its other stations." We requested comment on the view that an adverse finding regarding one station should not be automatically extended to others, suggesting that the misconduct at the first station might "be considered as evidence rather than a determinative finding" that such wrongdoing could be expected to recur at other commonly-owned facilities.

85. The Commission noted that the then-existing policy regarding sale of other commonly-owned facilities was to determine at the time of designation whether there was a substantial likelihood that the allegations being considered bore upon the prospective operation of the other stations.[98] If the finding was in the affirmative, the Commission advised the broadcaster that transfer or assignment applications for the other stations would not be entertained. This action could be taken by conditioning the renewal of the other stations. If no such limitation was expressed by the Commission, the licensee was free to assign or transfer in accordance with normal procedures. However, the Commission retained the right to impose limitations or take appropriate action against the other stations at a later time if circumstances warrant. Conversely, limitations imposed might later be removed if found appropriate.

86. While the Commission found those procedures to be an improvement over the former policy of deferring action the assignment or transfer applications related to uninvolved stations [99], we solicited comment on further changes. One such proposal on which comment was requested was that when it appears an allegation warranting designation of one station bears upon the operation of others, those other stations be designated for hearing in order to provide the licensee the opportunity to demonstrate that the alleged misconduct involving the first station is not relevant to the others. We further requested comment as to whether, in order to remove an undesirable licensee from the airwaves, it might be proper to allow the licensee to sell the station "with some kind of bar to future ownership or management of broadcast facilities," even if a profit is derived. We asked for comment as to whether, (consistent with our proposal on sales), the transfer or assignment application for an acquisition should be designated for hearing so the licensee would have the opportunity to show that the conduct in the first hearing was not relevant, or, alternatively, whether we should approve the assignment conditioned on the findings in the hearing on the first station.

2. Comments

87. Commenters such as NBC, Tribune, AFC and NRBA concur in our tentative view that misconduct at one station should not be presumed to be relevant to others. NBC remarks that the fact that misconduct has not occurred at the other stations is evidence that the licensee can operate them in the public interest, and states that the renewals of such stations' licenses should be granted rather than deferred. NRBA and Citizens comment, however, that if the licensee has engaged in fundamental misbehavior, such as clear misrepresentation to the Commission, that misconduct should be considered to apply to all of the licensee's stations. Similarly, UCC contends that if the misconduct reflects the licensee's attitude toward regulation, said misconduct might have an impact on all of its licenses.

88. NCCB, NBMC and CCA take a more restrictive view, arguing that generally all commonly controlled stations should be treated consistently, misconduct at one station constituting a strong presumption that the licensee is not qualified to operate the others. NBMC states in this regard that the greater the revenue expectation, the greater is the responsibility. However, CBS contends that even in a situation in which denial of renewal might be proper for deterrence, multiple denials would go beyond anything necessary to achieve the Commission's legitimate goals.

89. As to transfers and assignments, such parties as ABC, "Station Licensees" and NCCB recommend that we retain the *Grayson* policy, while CBS supports the proposal that in cases in which the Commission determines assignments will not be allowed, the party involved have the right to ask for an immediate hearing so as to show its other stations are not involved. Both CBS and NBC also encourage the use of unrestricted post-designation non-distress sales in order to increase the licensee's incentive to forego a hearing, rid the community of a possibly "unfit" licensee, avoid imposition of an unduly harsh financial penalty—the loss of the investment involved—increase investor certainty and encourage capital investment in broadcasting. However, NCCB believes that allowing such transactions would encourage misconduct, "since licensees would be confident that if their misconduct is discovered, they could always sell their remaining licenses," a view in which Citizens joins.

90. BML suggests that the *Grayson* policy be reversed and distress sales of uninvolved stations allowed even pre-designation. A distress sale is sanction enough, BML contends, and will eliminate the need for a lengthy hearing, remove a poorly performing licensee, and advance minority ownership. BML also advocates that in appropriate circumstances our policy barring

[97] We stated that in instances in which the conduct in question is being investigated in a hearing and the renewals of the owner's other licenses are pending, we might be unable to determine the relevance of the conduct to the operation of other stations. We requested comment as to whether, in such cases, we should "designate the renewal applications of these other stations for hearing, defer action on their renewals or grant those renewals (assuming they are grantable in all other respects) without prejudice to the taking of further action based on the findings deduced in the ongoing investigation or Commission hearing."

[98] *See Grayson Enterprises, Inc.*, 79 FCC 2d 936, 940 (1980).

[99] *Policy Statement on Qualifications of Broadcast Licensees*, 28 RR2d 705 (1973).

distress sales after Initial Decisions have been rendered might be waived. In a contrary vein, Citizens proposes a return to the 1973 policy, with increased expedition in the Commission's handling of the applications in question.

91. As to the policy of prohibiting acquisitions by licensees in hearing on basic character issues, CBS supports our alternative proposal of designating the matter for hearing, or conditionally approving the acquisition, while NBC believes a licensee whose misconduct has been found directly bearing on operations in only one community "should not be precluded from acquiring additional licenses if the standards for such acquisitions otherwise are met." However, NCCB opposes conditional acquisitions and argues that allowing a hearing to establish that there has been no misconduct which would apply to the new station would be "a total waste of Commission resources." There would be a strong possibility, NCCB states, that the licensee would be forced to cease operations within a short period of time, and "if the misconduct later results in an adverse finding, the Commission has placed itself in a quandary concerning the new license grant to an untrustworthy licensee."

3. Conclusions on Multiple Owner Misconduct

92. After considering the record developed herein, the Commission reaffirms its tentative view that there should be no presumption that misconduct at one station is necessarily predictive of the operation of the licensee's other stations. We do, however, agree with NRBA and Citizens that some behavior may be so fundamental to a licensee's operation that it is relevant to its qualifications to hold any station license. This is, however, a question of fact which must be resolved by the Commission on a case-by-case basis.[100] We do not believe that NCCB, NBMC and CCA have made a persuasive showing that there is a basis for automatically presuming that misconduct at one station means the licensee is unqualified to operate others. In this regard, there is merit to NBC's view that the apparently proper operation of the other stations is itself evidence of the licensee's capacity to operate broadcast stations in the public interest.[101]

93. In early 1983, the Commission overruled that element of the *Grayson* policy which involved limiting station transferability by conditioning the license renewals of those of the multiple owner's stations not being designated for hearing. Under the new policy, the tranferability of commonly-held stations is settled at the time of designation of the station whose qualifications are primarily at issue. The Commission found that "[i]f the charges are serious enough to possibly affect the transferability of the multiple owner's other stations, then by designating all the stations, we afford licensees faced with qualifications questions a better opportunity to defend themselves at the earliest practicable date." Unless the licenses are designated, they are freely transferable without condition.[102] The action taken is consistent with one of our NOI alternative proposals, and we believe the new policy, which was adopted after substantial experience with the procedures set forth in *Grayson*, should remain in effect. Thus, no restrictions will be placed on the renewals of any stations not designated. We do not find that reapplication of the restrictions of the 1973 policy, as advocated by Citizens, would be a proper method by which to advance our regulatory goals.[103]

94. As with renewals, we find that restrictions on new acquisitions should be consistent with the action taken regarding assignments and transfers. Thus, absent Commission action to restrict transfers or assignments of the licensee's other stations, we will in the future ordinarily allow such acquisitions to take place without conditions being imposed.[104] If the Commission has not as an initial matter found that the allegations under consideration involve conduct likely to impact the future operations of other stations, there generally appears to be no reason to condition or defer such transactions. We note, however, that allowing the initial acquisition does not affect the Commision's discretion to take action against the newly acquired stations, should the Commission's inquiry ultimately reveal that the applicant does not possess the requisite basic qualifications to remain a licensee.

95. Under present procedure, however, no decision is made regarding the seriousness with which the Commission views misconduct at a singly-owned station designated for hearing. Given our new procedures regarding acquisitions, we will in the future indicate in the designation orders of such stations if restrictions on acquisitions are to be imposed. In the absence of any action, no restrictions are to be presumed. As to the new applicant with no stations and its first application in hearing on character issues, additional acquisitions will be deferred or made subject to the outcome of the pending proceedings. We believe this procedure is appropriate because, unlike multiple owners with existing licenses, new applicants have no demonstrable evidence of their ability to perform consistent with the Commission's rules and policies.

E. Factors for Analysis

1. Questions

96. The last question formally raised in the NOI was:

(g) What factors are appropriate for analysis when examining an applicant's past misbehavior?

97. In this regard, the Commission noted that we had traditionally "analyzed the substance of the improper activities to determine their relevance and weight with respect to the ability of the applicant to operate its requested facility in the public interest." We observed that while we had, in the *Uniform Policy*, recognized that there is "no simple formula for predicting future conduct in every case," we had also in that document set forth several factors to be considered when determining the weight to be given acts of misconduct. These factors include "whether the misconduct was isolated or recurring, inadvertent or deliberate, and recent or remote." We asked for comment as to whether these and/or other factors were proper to apply in our efforts to predict future broadcast behavior. Additional factors which we proposed might be appropriate are the degree of harm inflicted on the public, the nature of the knowledge and involvement of management officials and significant stockholders, and "whether prompt corrective action has been taken." Further, we asked whether there was some point (perhaps ten years preceding the filing of an application) "beyond which misconduct should not be considered because of its age."

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[100] *RKO General, Inc.* v. *FCC*, *supra* note 8 at 237.

[101] There is a rebuttable presumption of service in the pubic interest. *BCFM*, *supra* note 17 at 416.

[102] *James S. Rivers*, 48 FR published March 1, 1983; *Transferability of Broadcast Licenses*, 53 R.R. 2d 126 (1983).

[103] We also note that there is a pending proceeding concerning changes to our distress sale policies. *See Notice of Proposed Rule Making* in MM Docket No. 85-299, FCC 85-543 (released October 8, 1985). Accordingly, we shall reserve judgement regarding post-designation distress sales. We would observe, however, that concerns regarding an applicant's character are generally more relevant where an applicant is acquiring, as opposed to transferring, a broadcast license. Moreover, the policy of deterrence, which is primarily aimed at ensuring compliance with our rules and policies, is not necessarily implicated by permitting transfers when the alleged misconduct involves non-FCC related activity.

[104] *See Metroplex Communications of Florida Inc.*, FCC 84-244 (June 1, 1984).

98. We emphasized that whatever factors were found relevant to our evaluation, "the Commission's constant goal should be to ensure licensee reliability." Thus, we asked for comment as to whether we should grant an application, regardless of serious misconduct, if the applicant can demonstrate "that it is capable of being trusted to operate its station in the public interest and that the likelihood of future misconduct is non-existent."

2. Comments

99. In response to our inquiry, a number of commenters, including Tribune, CBS, NCCB, and Citizens, suggest retention of the three factors of the *Uniform Policy*. Citizens states that a presumptive ten year statute of limitations might be an appropriate limitation on consideration of past misconduct, while CBS argues that "[w]ith the possible exception of conduct which may be said to reflect a pattern of flagrant disregard of the Commission's regulations and policies," there is no reason that activity occurring prior to the current license term should be considered.

100. Both Tribune and CBS state that any misconduct being considered must be weighed against the licensee's broadcast record. Tribune suggests that relevant factors in addition to those in the *Uniform Policy* include whether management was involved and whether corrective steps were taken. CBS comments that the degree of harm to the public is a factor which might be taken into account. NCCB agrees that the seriousness of the infraction is important, but would also consider whether the wrongdoer is contrite or unrepentant. Similarly, Citizens suggests that rehabilitation is relevant. Citizens also urges that the Commission take care "not to limit its ability to conduct as full of an inquiry as the specific facts demand." However, NAB argues that under the *Uniform Policy*, the Commission has "sought to draw ultimate inferences concerning an applicant's future good faith and probity from a variety of findings concerning the *mens rea* underlying particular aspects of the applicant's past conduct." NAB contends that "even if predictions of future trustworthiness could be quantied in some fashion, the Commission has never sought to define the degree to risk to the public that it will find acceptable." Thus, NAB concludes, "[i]t is apparent in retrospect that this approach to character leaves the widest room for the kind of subjective, inconsistent decision-making that the Notice candidly describes." The danger, NAB states, is that "a facade of objectivity will be constructed around an assessment that is ultimately intuitive."

101. In response to the Commission's question as to whether an applicant who had engaged in serious misconduct might nonetheless have its application granted if it could demonstrate the ability to operate in the public interest with no likelihood of future misconduct, Citizens states that the question "presents something of a contradiction in terms," observing that no examples were given. Citizens argues that "serious wrongdoing by definition disqualifies an applicant from becoming or remaining a public trustee," and states that "mere promises of exemplary future behavior cannot form the basis for grant of a license."[105] Thus, Citizens finds that while it might be "arguably conceivable in the abstract to, for example, grant renewal in spite of serious misconduct, it is impossible to here fashion a benchmark for resolving such a case." Citizens contends that this would have to be done, "if at all," case-by-case.

3. Conclusions Regarding Analysis

102. Upon consideration of the record developed, and in view of our experience in this area, the Commission finds that the three factors of the *Uniform Policy* should continue to be utilized in determining the weight to be accorded acts of misconduct. We continue to believe that the willfulness of the misconduct, the frequency of such behavior, and its currency are relevant to the process of making predictive judgments about future broadcast performance. We further find that the factors set forth in the NOI, which have in fact been used at various times in our past analyses, are also useful to this process. The seriousness of the misconduct, the nature of the participation, if any, of managers and owners, and the efforts made to remedy the wrong all appear to benefit the analytic process. Additionally, the applicant's record of compliance with our rules and policies, if any, should ordinarily be taken into account.[106]

103. As we have earlier observed,[107] deterrence is an important element of the character qualifications process, as it helps to ensure future realiability and truthfulness. The role of deterrence in the licensing process has long been recognized.[108] The purpose of the character qualifications aspect of the Commission's licensing process is not, of course, to eliminate licensees from further activity in broadcasting, but, as we have stated, to assure that those granted a license will be truthful in their dealings with the Commission and reliable operators of their stations. Sanctions imposed may deter future misconduct of the applicant in question and of others observing our actions. As many commenters note, a range of sanctions short of revocation or failure to renew a license can be imposed, by the Commission. Suffering the loss of one station, with the costs thereby imposed, will likely serve to deter all but the most unrepentant from serious future misconduct. Only in the most egregious case need termination of all rights be considered.

104. While we understand NAB's concerns regarding the pitfalls of this process, we believe that insofar as we have determined that character qualifications findings are to continue as part of broadcast licensing such analyses are necessary, notwithstanding that they are sometimes imprecise. The Commission is, however, of the view that in redefining the type of conduct we consider relevant to making character findings, and in refining the manner in which allegations of misconduct will impact upon the licensing process, we have taken significant steps to make our efforts in this area more equitable an efficient.

105. The Commission finds that NAB's concerns regarding subjectivity are relevant to NCCB's request that we consider whether the wrongdoer is "contrite or unrepentant," and will not add that to our list of factors regularly to be applied. However, we concur with Citizens that rehabilitation is significant. We find that factors which we have already determined to consider, including the passage of time since the misconduct, the frequency of misconduct, the involvement of management and the efforts to remedy the situation, are good evidence as to whether rehabilitation has occurred. No separate "rehabilitation" inquiry appears necessary, although findings regarding rehabilitation would not be inappropriate. As to the time period relevant to character inquiries, we find that, as a general matter conduct which has occurred and was or should have been discovered by the Commission, due to information within its control,

[105] Citing *United Church of Christ. v. FCC*, 359 F.2d 994. 1008 (D.C. Cir. 1966) ("*United Church I*")

[106] We stress that this analysis only comes into play after the Commission has found the conduct in question involves character issues.

[107] *See supra* note 26.

[108] *FCC* v. *WOKO, supra* note 10 at 228. *See also Stereo Broadcasters, Inc.* v. *FCC, 652 F.2d 1026 (D.C. Cir. 1981).*

prior to the current license term [109] should not be considered, and that, even as to consideration of past conduct indicating "a flagrant disregard of the Commission's regulations and policies," a ten year limitation should apply. The "inherent inequity and practical difficulty" [110] involved in requiring applicants to respond to allegations of greater age suggests that such limit be imposed.

106. As a last consideration in this area, the Commission notes that having again reviewed the matter, we find merit to Citizens' analysis regarding whether the applicant involved in serious misconduct might have its application granted if it could show the ability to operate in the public interest with no likelihood of future misconduct. The granting of such application is, as Citizens states, "arguably conceivable in the abstract," but the matter must be confronted on the facts of a particular case.

IV. Comparative Proceedings

1. Questions Presented

107. A significant matter which remains to be determined is the manner in which character issues should be treated in comparative proceedings. The present treatment of comparative hearings involving new applicants is governed by the *1965 Policy Statement on Comparative Broadcast Hearings*, [111] which also controls the introduction of evidence, but not the weight given the various criteria, in comparative proceedings involving renewal applicants.[112]

108. In the *1965 Policy Statement*, the Commission said as to the treatment of character:

> Since substantial demerits may be appropriate in some cases where disqualification is not warranted, petitions to add an issue on conduct relating to character will be entertained. In the absence of a designated issue, character evidence will not be entertained.[113]

2. Comments

109. Limited comment was received on the treatment of character in the comparative process in response to the NOI. For example, ABC and NRBA suggest that consideration of nonbroadcast misconduct might be appropriate as a comparative factor. ABC states that this might be useful to distinguish which of the applicants can best be relied upon to be honest and to comply with the Communications Act, Commission rules and policies. However, NRBA would not consider such misconduct relevant to a renewal applicant.[114]

3. Conclusions

110. After reviewing the record in this proceeding and in light of our own experiences adjudicating character issues in the comparative context, we are of the view that character considerations should be excluded from comparative analysis. We believe that such an approach is consistent with the policies articulated in the *1965 Policy Statement* as well as the new guidelines established herein. It is significant that one of the primary purposes of the *1965 Policy Statement* was to eliminate from the hearing process time consuming elements not substantially related to the public interest.[115] As applied to character, the Commission recognized that while character considerations "may be appropriate" as a comparative factor, there was a need to avoid unduly prolonging the hearing process.[116] Balancing these competing considerations, the Commission concluded that in the absense of a designated issue, character evidence would not be taken.[117] Moreover, the Commission noted that it did not intend to stultify the continuing process of reviewing its judgment as to the scope of its character inquiry in the comparative context.[118]

111. Our experience with the standards established by the *1965 Policy Statement* reveals that we have been unsuccessful in screening out those comparative character issues which have little relevance to our regulatory concerns. Narrowing the range of relevant behavior will not by itself, screen out all issues lacking in probative value. Even where the type of misconduct is basically probative we find ourselves in the position of adjudicating an applicant's minor transgressions which have very little bearing on its ability to act as a responsible broadcaster.[119] Moreover, in comparative proceedings the character issues specified seldom prove to have decisional significance.[120]

112. Elimination of character as a comparative issue is also consistent with the policy objectives underlying in the instant proceeding. As observed previously, the scope of the Commission's character inquiry will now focus on those aspects of an applicant's character that relate to its proclivity for truthfulness in dealing with the Commission and its propensity for complying with our rules and policies.[121] Unlike our prior approach—which often attempted to determine which applicant possessed superior moral fiber—the policies underlying our new character inquiry do not readily lend themselves to a comparative analysis. In this regard, the propensity for an applicant to be truthful and reliable relates to its basic qualifications to be a licensee. Once this fact has been established, further comparative inquiry is of marginal benefit.[122] Because our previous policies attempted to determine which applicant was morally superior, there was an incentive to compare all aspects of an applicant's character with that of its competitor. The new focus of our character inquiry, however, has eliminated the need for such a comparative approach.

113. In light of these considerations, we can no longer justify the costs associated with comparative character evaluation. Such an evaluation increases the cost, complexity, length and subjectivity of these proceedings

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[109] This time limit is consistent with our recent handling of such matters. *See Central Texas Broadcasting Company, Ltd.*, 90 F.C.C.2d 583, 593 (Rev. Bd. 1982), *aff'd* ___ FCC 2d ___ (1983).

[110] *Kaye-Smith Enterprises*, 71 FCC 2d 1402, 1406–1407 (1979), *recon. denied*, 46 R.R.2d 1583 (1980).

[111] 1 FCC 2d 393 (1965) (hereinafter "*1965 Policy Statement*").

[112] *Seven (7) League Productions, Inc. (WIII)*, 1 FCC 2d 1957, 1958 (1965).

[113] *1965 Policy Statement, supra* note 111 at 399.

[114] NAB suggests that we consider the issue in a subsequent inquiry. However, Blair/Post-Newsweek oppose this view, stating that there is no particular reason to deal with character differently in a comparative context than in any other applications situation.

[115] *See 1965 Policy Statement, supra* note 111 at 394.

[116] The Commission noted, "[o]ur intention here is not only to avoid unduly prolonging the hearing process, but also to avoid those situations where an applicant converts the hearings into a search for his opponents minor blemishes, no matter how remote in the past or how insignificant." *Id.* at 399.

[117] *Id.*

[118] *Id.*

[119] As the Review Board has observed, "[i]t is recognized that in comparative licensing proceedings where the applicants qualifications are frequently fairly close, it is all but irresistible to stick the competition with a misrepresentation or lack of candor finding as a surefire way to secure the license. It is not surprising, therefore, that our comparative case law is littered with allegations of prevarication to the point where an unfamiliar reader would declare that our processing files are a collective rap sheet of the nation's pathological liars." *Fox River Broadcasting Company, Inc.* 88 FCC 2d 1132, 1139 n.15 (Rev. Bd. 1982) aff'd 93 FCC 2d 127 (1983).

[120] A review of all comparative proceedings reported in *Pike and Fisher Radio Regulations 2nd Series* reveals that designated comparative character issues, as opposed to basic qualifications issues, have been dispositive in only approximately eight cases during the past twenty two years.

[121] *See infra* text at paras. 21–23.

[122] In this regard, our approach to character is similar to our consideration of citizenship and financial qualifications. *See* 47 U.S.C. 308(b); *1965 Policy Statement, supra* note 111 at 399 n.13.

without a sufficient benefit. Nothing in the Communications Act requires that there be comparative character issues. Accordingly, if consideration of character does not lead to disqualification, it will no longer be a relevant criterion in comparative proceedings involving new applicants.

114. We also believe that comparative character issues should be excluded from consideration in comparative renewal proceedings. As observed previously, there appears to be no basis for treating existing licensees differently from new nonlicensee applicants.[123] Moreover, the policy considerations for eliminating comparative character issues in the new applications process are equally applicable to the comparative renewal process. In addition, we believe that the existence of a record of compliance with our rules and policies renders comparative character analysis inappropriate in the renewal context. The fundamental purpose of our character inquiry is to make predictive judgments relating to an applicant's propensity to deal honestly with the Commission and to comply with our rules and policies. In the comparative renewal context, however, a licensee's record of compliance provides direct evidence of an applicant's future behavior. In this regard, we believe that direct evidence of an applicant's behavior outweighs predictive judgments based on extrinsic evidence of an applicant's character.[124] Of course where evidence of bad character during the preceding license period is of such a nature so as to raise a qualification issue, then such evidence should be considered. Accordingly, if consideration of character does not lead to disqualification, it will no longer be a relevant criterion in comparative renewal proceedings.[125]

V. BC Docket No. 78–108

1. Questions Presented

115. The final matter to be considered in this document is the disposition of the NPRM in BC Docket No. 78–108. In the character NOI, the Commission observed that a number of remedies are available to us when misconduct does not warrant denial of the application in question. We stated that "[t]he ability to impose these lesser sanctions accords the Commission great flexibility in dealing with various infractions." In this regard, we took note of the proposed rules amendment in BC Docket No. 78–108, which would, we stated, "allow the Commission to take direct action against applicants who have engaged in immaterial misrepresentations not warranting denial of their application."

116. In the BC Docket No. 78–108 NPRM, the Commission noted that while, pursuant to the Communications Act [126] and to 18 U.S.C. 1001, licensees and permittees have an obligation to respond to Commission correspondence in a prompt and truthful manner, the current rules regarding such obligations are primarily limited to matters related to pending applications or Official Notices of Violation. The Commission found that in some instances prompt and accurate responses to Commission correspondence and inquiries were not being received and proposed adoption of a rule in this respect which would in turn subject licensees and permittees to appropriate administrative sanctions (including possible forfeitures). The proposed rules changes would require responses "within the times specified" by the Commission, as well as prohibiting misrepresentations in all written submissions from permittees and licensees.

2. Comments

117. Comments on the proposal were received from ABC and NRBA. ABC opposes both aspects of the proposal, arguing that the changes are "unnecessary and unwarranted." ABC contends that "there is no dearth of agency requirements for prompt responses to inquires pertinent to the exercise of the F.C.C.'s regulatory responsibilities, and there are ample means at the agency's disposal to require both timely and truthful responses." Although NRBA opposes adding the rule on timeliness of responses, it supports the proposal regarding misrepresentation. NRBA notes that as to the regulation on misrepresentation, "[t]he proposal here in question would merely serve to include specific reference" to the obligation to respond truthfully to the Commission in the rules, the effect being "to accord the Commission additional flexibility in its treatment of untruthful responses." NRBA concludes that this change "would not create any new burdens for broadcasters," but, rather, would "benefit broadcasters by making available to the Commission a wider range of sanctions with which to penalize misrepresentations."

3. Conclusions

118. The Commission finds upon consideration of the record that the proposal of a new regulatory requirement mandating timely responses to all Commission inquiries, regardless of their nature, would impose a requirement not shown to be necessary, and extremely complex and costly in implementation. Such a rule might well require Commission mailing of all requests by certified mail, necessitating record-keeping as to which the public interest benefit has not been demonstrated. Our experience in the years which have elapsed since issuance of the NPRM does not reveal the need for this rule. As to the rule on misrepresentation, we are persuaded by the comments of NRBA, and by our reflections upon the treatment of character issues, that the adoption of a new rule § 73.1015 consistent with our findings herein is in order. The text of the new rule will be found in Appendix "B".[127]

VI. Regulatory Flexibility Analysis

119. Our action in BC Docket No. 78–108 constitutes a final rule under section 553 and generally requires a final regulatory flexibility analysis. In the instant case, however, the *Notice of Proposed Rule Making* was issued prior to January 1, 1981. Pursuant to section 4 of the Regulatory Flexibility Act, Pub. L. No. 90–623, 82 Stat. 1312 (1980), the obligation to prepare a final regulatory flexibility analysis applies only to rule making proceedings in which a notice of proposed rule making was issued on or after January 1, 1981. Accordingly, a regulatory flexibility analysis is not required in this proceeding.

120. In any event, we do not believe that adoption of this *Report, Order and Policy Statement* will have an adverse impact on small businesses. In this regard, all broadcast applicants will be treated equally with respect to character qualifications and no unique burdens will be placed on small businesses. Moreover, our action in these proceedings will most likely benefit small businesses by expediting the

[123] *See supra* at para. 49.

[124] The Commission has implicitly recognized this fact in numerous cases where an applicant's past broadcast record has outweighed a comparative character demerit. *See Westinghouse I, supra* note 22.

[125] Our action today in no way prejudges consideration of compliance with the Communications Act and/or the Commission's rules and policies as it may relate to an incumbent's past broadcast record in the context of acquiring a legitimate renewal expectancy. *See Notice of Inquiry* in Gen. Docket No. 81–742, 88 FCC 2d 120 (1981). For example, violations of the Communications or a specific commission rule or policy may militate against the finding of a meritorious record.

[126] Citing sections 308(b) and 312.

[127] In addition, we have made appropriate revisions to § 73.3513. We are also amending § 73.4280 to reflect our deletion of the *Uniform Policy* and the substitution of the policies adopted herein.

hearing process and thereby reducing the expenditure of time and resources by applicants. Finally, our action in BC Docket No. 78–108, which establishes a new rule prohibiting misrepresentations to Commission inquiries merely codifies our longstanding policy of requiring candor in all dealings with the Commission. We do not perceive such a requirement as imposing a burden on any type of business entities.

VII. Miscellaneous

121. All designation orders adopted after the effective date of this *Report, Order and Policy Statement* should reflect the policies adopted herein. As to comparative proceedings in which the record is still open, the Administrative Law Judge should render his or her decision pursuant to the policies adopted herein. All proceedings which are currently before the Commission, its staff, or any other Commission body should, where appropriate, be resolved consistent with the policies set forth. Cases already decided by the Commission or the Review Board will not be reconsidered, but appeals of Review Board decisions will be acted upon consistent with the policies adopted herein.[128] This action comports with traditional judicial practice while respecting the need for administrative finality, and is consistent with prior Commission practice.[129]

122. Accrodingly, it is ordered that, because of the applicability of this Report Order and Policy Statement to pending proceedings and in accordance with section 553(d)(2)(3) of the Administrative Procedure Act, the policies announced herein are adopted, and § 73.4280 of the Commission's Rules is amended as set forth in Appendix "B", effective upon publication in the **Federal Register.**

123. It is further ordered that § 73.3513 of the Commission's Rules is amended, as set forth in Appendix "B", effective February 20, 1986.

124. It is further ordered that new § 73.1015 be added to the Commission's rules as set forth in Appendix B, effective February 20, 1986.

125. It is further ordered that all applicable FCC Forms will be amended by subsequent Commission action, in accordance with the provisions in the *Report and Order and Policy Statement.*

126. It is further ordered, That the Secretary SHALL CAUSE this Report and Order and Policy Statement to be printed in the FCC 2d Reports.

127. Action herein is taken pursuant to sections 4(i), 303(r), 308(b), 312, 319(a) and 403 of the Communications Act of 1934, as amended.

128. For further information regarding this proceeding, contact David L. Donovan or Andrew J. Rhodes, Mass Media Bureau, (202) 632–7792.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A—Gen. Docket No. 81–500

Comments

1. American Broadcasting Companies, Inc.
2. American Family Corporation
3. American Legal Foundation [1]
4. BML Associates
5. John Blair & Company and Post-Newsweek Stations, Inc.
6. CBS, Inc.
7. Citizens Communications Center, Black Citizens for a Fair Media and the Committee for Community Access.
8. Committee for Community Access [1]
9. Concerned Viewers of Central Virginia
10. Joint Comments:
11. District Broadcasting Company, Life Broadcasting Company, Inc., San Mateo Broadcasting Company, Inc., Osborne Communications Corporation, SRW, Incorporated, Community Airwaves, Inc.
12. Paul J. McGeady
13. National Association for Better Broadcasting
14. National Association of Broadcasters
15. National Broadcasting Company, Inc.
16. National Citizens Committee for Broadcasting
17. National Radio Broadcasters Association
18. RKO General, Inc.
19. Station Licensees:
    Argonaut Broadcasting Company
    Booneville Broadcasting Company
    Forward Communications Corporation
    Group One Broadcasting Company
    Guaranty Broadcasting Corporation
    KFAB Broadcasting Company
    Lake Huron Broadcasting Corporation
    May Broadcasting Company
    John H. Phipps Broadcasting Stations, Inc.
    E.O. Roden & Associates, Inc.
    Shamrock Broadcasting Company, Inc.
    Studio Broadcasting System
    Division of Highwood Service, Inc.
    Tri-Cities Broadcasting Company
    Ralph C. Wilson Industries, Inc.
    Wilson Communications, Inc.
    WKRG–TV, Inc.
20. Tribune Company
21. Office of Communication of the United Church of Christ [1]

Reply Comments

1. American Broadcasting Companies, Inc.
2. John Blair & Company and Post-Newsweek Stations, Inc.
3. Citizens Communications Center, Black Citizens for a Fair Media and the Committee for Community Access [1]
4. National Association of Broadcasters
5. National Black Media Coalition
6. Station Licensees [2]
7. Tribune Company
8. Office of Communications of the United Church of Christ and Communication Commission of the National Council of Churches of Christ

BC Docket No. 78–108 Comments

1. American Broadcasting Companies, Inc.
2. National Radio Broadcasting Association

Appendix B

PART 73—[AMENDED]

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 73 continues to read:

Authority: Sections 4(i), (303)r, 308(b), 312,

[128] On October 23, 1981, United Broadcasting Co., Inc. ("United") filed a motion to strike the "Joint Comments" of District Broadcasting Company, *et al.* ("District"). United contends that the "Joint Comments" are in essence arguments on the merits of certain pending comparative renewal proceedings. In its opposition to the motion to strike, submitted on November 5, 1981, District argues that the purpose of its comments was not to litigate the merits of a particular proceeding, but only to illustrate its discussion of certain matters under consideration in the instant rulemaking. United's reply to District's opposition to the motion to strike, filed on November 9, 1981, asserts that District's statement that its intention was not to litigate the issues involved in other proceedings "defies reason and common sense." The Commission has entertained District's "Joint Comments" to the degree that they properly relate to this rule making proceeding, and said "Joint Comments" are otherwise dismissed.

[129] *See Policy Statement on Comparative Broadcast Hearings, supra,* at 399–400.

[1] Comments and reply comments were late-filed, but as their lateness did not exceed a few days and no prejudice to any party was occasioned thereby, these comments and reply comments are being considered herein.

[2] Argonaut Broadcasting Company did not participate in Station Licensees' reply comments.

319(a) and 403 of the Communications Act as amended.

2. By adding a new § 73.1015 to read as follows:

§ 73.1015 Truthful written statements and responses to Commission inquiries and correspondence.

The Commission or its representatives may, in writing, require from any permittee or licensee written statements of fact relevant to a determination whether an application should be granted or denied, or to a determination whether a license should be revoked, or to some other matter within the jurisdiction of the Commission. No applicant, permittee or licensee shall in any response to Commission correspondence or inquiry or in any application, pleading, report or any other written statement submitted to the Commission, make any misrepresentation or willful material omission bearing on any matter within the jurisdiction of the Commission.

Note.—Section 73.1015 is limited in application to written matter. It implies no change in the Commissions existing policies respecting the obligation of applicants, permittees and licensees in all instances to respond truthfully to requests for information deemed necessary to the proper execution of the Commission's functions.

3. § 73.3513 is amended by revising paragraph (d) to read as follows:

§ 73.3513 Signing of applications.

* * * * *

(d) Applications, amendments, and related statements of fact need not be submitted under oath. Willful false statements made therein however, will be considered a violation of § 73.1015, are also punishable by fine and imprisonment, U.S. Code, Title 18, section 1001, and by appropriate adminstrative sanctions including revocation of station license pursuant to section 312(a)(i) of the Communications Act.

* * * * *

4. Section 73.4280 is revised to read as follows:

§ 73.4280 Character evaluation of broadcast applicants.

See Report and Order and Policy Statement, Gen. Docket 81-500, BC Docket 78-108, FCC 85 648, adopted Dec. 10,1985, —, FR — (—)(— 1986).

[FR Doc. 86-1386 Filed 1-22-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 97

[PR Docket No. 85-105; FCC 86-18]

Radio Services; Automatic Control of Amateur Stations Transmitting Digital Communications on Frequencies 50 MHz and Above

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: This document amends the Amateur Radio Service Rules by permitting amateur stations to be under automatic control when transmitting digital communications on frequencies 50 MHz and above. The rule is necessary so that amateur licensees can experiment with operating modes brought about by digital technology. The effect of the rule changes is to provide for newer methods of communication which will benefit the amateur community and the general public.

EFFECTIVE DATE: March 14, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR INFORMATION CONTACT: Maurice J. DePont, Private Radio Bureau, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Amateur radio, Radio, Digital communications.

Report and Order

In the matter of amendment of Part 97 of the Commission's Rules to permit automatic control of amateur radio stations. (PR Docket No. 85-105, RM-4879).

Adopted: January 13, 1986.
Released: January 16, 1986.
By the Commission.

1. On April 5, 1985, the Commission adopted a Notice of Proposed Rule Making (50 FR 15196; April 17, 1985) to permit any amateur station to be under automatic control provided that operation was on frequencies above 29.5 MHz and that no third-party traffic was transmitted. This was an expansion of the proposal requested by The American Radio Relay League, Inc. (ARRL), who had requested automatic control only for stations transmitting digital communications while operating on frequencies above 30 MHz. Nineteen comments and one reply comment were filed in this proceeding.[1]

2. Our Notice of Proposed Rule Making in this proceeding, *supra,* particularly invited amateur radio operators experienced in automatic control to submit comments on the practicality of expanding automatic control to encompass all amateur operations, not just digital communications. Such comments were not forthcoming. Because of the lack of user support, we will adopt only the ARRL's recommendation to limit automatic control to digital communications on very high frequencies (VHF) and above. (We select 50 MHz rather than 30 MHz, as the petitioner requests, because there are no amateur frequencies between 29.7 and 50 MHz).

3. In the Notice, *supra,* we reminded amateur operators that the current rules require the presence of the control operator at the station control point whenever third-party traffic is being transmitted. We emphasized that the proposed amendments would still prohibit automatic control of the station when it is transmitting third-party traffic. Some commenters were confused about unsupervised third-party traffic. For example, repeater stations are already permitted to be operated under automatic control. However, as with any amateur station, when they are transmitting third-party traffic, the control operator must be present at the control point monitoring and supervising the transmissions.

4. Many of the commenters request that high-speed digital operating modes, such as packet-switching, bulletin boards, computer based message systems and electronic mailboxes be exempt from the requirement that the control operator supervise third-party traffic. They believe that the third-party rules as applied to such high-speed digital communications are impracticable and would, in effect, nullify the advantages of automatic control. To acquiesce in that request would be inconsistent with other types of amateur operation. Third-party traffic is radio communications on behalf of anyone other than the control operator.[2] Neither the speed at which the message is transmitted nor the emission mode (voice, telegraphy, digital etc.) changes its character. This was pointed out in our letter of October 19, 1978, to Richard L. Baldwin, then General Manager of the

[1] Comments filed by the American Radio Relay League, Inc., (ARRL), Robert C. Clements, Jess de la Cuesta and Joseph Anthony Wolos were filed late. Consideration of the viewpoints expressed in those comments will aid in the resolution of this proceeding. Therefore, we accept them.

[2] Section 97.3(v).

ARRL.[3] In that letter, we reiterated that unsupervised third-party traffic by amateur stations is not permitted.

5. Some comments suggest that the third-party traffic rules be amended so that they would be applicable only at the time the third-party traffic is first introduced into the amateur communications system. However, screening the message content at its introduction does not change the character of the traffic. It is still third-party traffic which must be closely regulated in the non-common carrier Amateur service. Otherwise, amateur facilities and frequences would be open to non-amateurs and could eclipse other amateur uses. Moreover, we are also concerned about the final destination of the message. We do not want to give our approbation to a mechanism which could be used to circumvent the international Radio Regulations which forbid exchange of amateur third-party traffic between countries who are not parties to agreements permitting such traffic. International third-party radio communications are prohibited by § 97.114 of the amateur rules and Article 32, number 2733 of the International Radio Regulations (Geneva, 1979), except where arrangements have been made between the two countries involved, Article 32, number 2734.

6. Some commenters suggest that MF and HF frequencies between 1.8 and 29.5 MHz be added to the frequencies available for automatic control or that automatic control be extended at least to all digital communications below 29.5 MHz on a regular basis or by temporary special authority (STA). They state that coast-to-coast coverage for point-to-point message handling would be accommodated by including MF and HF frequencies. Because of the possibility of congestion on the MF and HF frequencies, we do not believe that it would be advisable to permit automatic control on those frequencies.

7. Robert C. Clements is under the impression that we inserted a clarification into proposed § 97.79(b) that the station licensee is presumed to be the control operator of the station, unless there is documentation to the contrary. However, this is essentially the same as the present wording of § 97.79(b). The words "at all times" will be deleted from this rule in order to be consistent with the revised wording of § 97.3(m)(3).

8. For the reasons given herein, we amend our rules to permit automatic control only for digital communications on amateur frequencies 50 MHz and above. Further, we affirm our present rule that requires the control operator to be present at the control point whenever the station is engaging in third-party traffic.

9. It is ordered, that part 97 is amended as set forth in the Appendix hereto. This action is taken pursuant to the authority contained in sections 4(i) and 303 (r) of the Communications Act of 1934, as amended.

10. It is further ordered, that these rule amendments shall become effective March 14, 1986.

11. It is further ordered, that the Secretary shall cause a copy of this Report and Order to be published in the **Federal Register.**

12. It is further ordered, that this proceeding is terminated.

13. Information in this matter may be obtained by contacting Maurice J. DePont, (202) 632–4964. Private Radio Bureau, Federal Communications Commission, Washington, D.C. 20554.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 97—[AMENDED]

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is amended, as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. Section 97.3(m)(3) is revised to read:

§ 97.3 Definitions.

* * * * *

(m) * * *

(3) *Automatic control* means the use of devices and procedures for control without the control operator being present at the control point when the station is transmitting.

* * * * *

3. Section 97.79(b) is revised to read:

§ 97.79 Control operator requirements.

* * * * *

(b) Every amateur radio station, when transmitting, must have a control operator. The control operator must be present at the control point of the station, except when the station is transmitting under automatic control. The control operator must be a licensed amateur radio operator or permittee designated by the station licensee. The control operator and the station licensee are both responsible for the proper operation of the station. For purposes of enforcement of the rules of this part, the FCC will presume that the station licensee is the control operator of the station, unless documentation to the contrary exists.

* * * * *

4. Section 97.69 is amended by adding a new paragraph (d), as follows:

§ 97.69 Digital communications.

* * * * *

(d) An amateur station may be under automatic control when transmitting digital communications on frequencies 50 MHz and above.

5. A new section 97.80 is added, as follows:

§ 97.80 Operation under automatic control.

(a) When under automatic control, devices must be installed and procedures must be implemented which will ensure compliance with the rules when the control operator is not present at the control point of the amateur station.

(b) No amateur station may be operated under automatic control while transmitting third-party traffic.

(c) Automatic control of an amateur station must cease upon notification by the Engineer-in-Charge of a Commission field office that the station is transmitting improperly or causing harmful interference to other stations. Automatic operation must not be resumed without prior approval of the Engineer-in-Charge.

6. Section 97.114 is amended by adding a new paragraph (4) to paragraph (b) as follows:

§ 97.114 Third-party traffic.

* * * * *

(b) * * *

(4) Third-party traffic from an amateur station under automatic control.

* * * * *

[FR Doc. 86–1385 Filed 1–22–86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 5

[Federal Acquisition Circular 84–13]

Federal Acquisition Regulation

Correction

In FR Doc. 85–30353 beginning on page 52428 in the issue of Monday, December

[3] FCC 78–742; 70 F.C.C. 2d 1303. See also News Release No. 2028, October 25, 1978.

23, 1985, make the following correction on page 52430:

In the third column, in Section 5.301, in the second line, "were synopsized" should read "were not synopsized".

BILLING CODE 1505-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1312

[Ex Parte No. MC-175]

Tariffs and Schedules; International Joint Through Rates Involving Ocean Carriers; Revision of Tariff Filing Requirements

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: Pursuant to vote in an open voting conference held on October 9, 1985, the Commission is amending 49 CFR 1312.37 by eliminating the requirement at (c)(1) that international joint through rate tariffs involving ocean carriers include the division or rate to be received by the domestic carrier for its share of the revenue covering a through shipment or aggregate of shipments under the tariff. The filing will, however, be made permissive rather than be proscribed. The Commission is also amending § 1312.37 at (b) to permit the filing of an abbreviated tariff specifically referring to a more detailed tariff(s) on file with the Federal Maritime Commission (FMC). Full tariff information will still have to be provided to the Commission where there is no FMC filing to incorporate by reference.

These revisions are made to achieve consistency with the pro-competitive rate provisions of the Shipping Act of 1984. Upon effectiveness of these rules, the Commission's special permission relief, allowing temporary waiver from filing of the inland division breakout, will terminate.

EFFECTIVE DATE: February 24, 1986.

FOR FURTHER INFORMATION CONTACT:
Marc A. Lerner (202) 275-7150

or

Howell I. Sporn (202) 275-7691.

SUPPLEMENTARY INFORMATION: Additional information is contained in the full Commission decision which is available for public inspection at the Office of the Secretary, Room 2215, 12th Street and Constitution Avenue, NW., Washington, DC 20423. Copies may be purchased from T.S. Infosystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (800) 424-5403, or (202) 289-4357 in the Washington, DC, metropolitan area.

Energy and Environmental Considerations

This action will not affect significantly either the quality of the human environment or the conservation of energy resources.

Final Regulatory Flexibility Analysis

The Commission certifies that these final rules will not have a significant economic impact on a substantial number of small entities. The changes will bring Commission regulations into harmony with the pro-competitive rate provisions of the Shipping Act of 1984.

List of Subjects in 49 CFR Part 1312

Freight forwarders, Maritime carriers.

This notice and accompanying decision are issued under the authority of 5 U.S.C. 553 and 49 U.S.C. 10762.

Decided: December 19, 1985.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Taylor, Sterrett, Andre, Lamboley, and Strenio.

James H. Bayne,

Secretary.

Appendix

PART 1312—[AMENDED]

Part 1312 is amended as follows:

1. The authority citation for 49 CFR Part 1312 will continue to read as follows:

Authority: 49 U.S.C. 10762; 5 U.S.C. 553.

2. 49 CFR 1312.37 is amended by revising paragraphs (b), (c), and (d), to read as follows:

§ 1312.37 Export and Import traffic and joint rates with ocean carriers.

* * * * *

(b) *Through routes and joint rates.* A domestic carrier may establish a through route and joint rate with a non-vessel or vessel operating ocean carrier for the transportation of property between any place in the United States and any place in a foreign country. Tariffs for such service shall be filed with the Commission is either long form or abbreviated form, as follows:

(1) The long-form tariff shall name the through routes and joint rates, and may be filed in the name of the ocean carrier, a conference of ocean carriers, the domestic carrier, or the publishing agent of the carriers.

(2) An abbreviated tariff shall refer to a specific tariff(s) on file with the Federal Maritime Commission (FMC) containing the joint through rates on which the domestic carrier participates, and shall be filed in the name of the domestic carrier or the publishing agent of the domestic carrier.

(c) *Tariff Provisions.* (1) Tariffs filed with the Commission under the provisions of (b)(1) above shall comply with all of the other requirements of this part. The division or rate to be received by the domestic carrier for its share of the revenue covering a through shipment or aggregate of shipments may, but need not, be shown in the tariff.

(2) Abbreviated tariffs filed under the provisions of (b)(2) above shall comply with the relevant format requirements, including those pertaining to "participating carrier" publications.

(3) A tariff filed in the name of a conference need not show "Agent" after the name of the conference unless the conference publishes as an agent.

(4) "Cargo, N.O.S." may be used as a commodity description provided the term is clearly defined in the tariff.

(d) *Changes on less than statutory notice.* (1) Abbreviated tariffs, or amendments thereto, filed under the provisions of (b)(2) above may be filed to become effective on a specified date on not less than one-day's notice.

(2) For tariffs filed under the provisions of (b)(1) above that include the division or rate accruing to the domestic carrier, the following changes may be published by amendment to the tariff to become effective on a specified date not prior to the date filed with the Commission:

(i) A change in a published rate or other provision which results in reduction or in no change in charges, provided that there is no change in the separately stated division or rate accruing to the domestic carrier or a provision governing or affecting that division or rate. This includes a change in a rate that results in lessening or canceling a proposed (*i.e.*, published but not yet effective) increase; and

(ii) The establishment of a rate on a specific commodity not previously

named in a tariff which results in a reduction or no change in charges.

(3) Changes in charges for terminal services, canal tolls, or other additional charges may be made effective upon a specified date not prior to the date filed with the Commission, provided the charges are not under the control of the carrier or conference, and the agency assessing the charges to the carrier increases the charges without notice or without adequate notice to the carrier or conference. If the tariff separately states the division, rate, or charge accruing to the domestic carrier, and if a change occurs in the division, rate, or charge, the amendment shall contain a statement explaining the change.

* * * * *

[FR Doc. 86-1297 Filed 1-22-86; 8:45 am]
BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 51, No. 15
Thursday, January 23, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-146-AD]

Airworthiness Directives: CASA Model C-212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require the installation of split bus bars in the overhead electrical panel and a new transformer on certain CASA Model C-212 airplanes. These actions are necessary to provide two independent power sources for navigation and communications systems. A single failure could cause the loss of all navigation and communications systems.

DATES: Comments must be received on or before March 17, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-146-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark E. Baldwin, Standardization Branch, ANM-113; telephone (206) 431-2978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthines Rules Docket No. 85-NM-146-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Spanish Direccion General De Aviacion Civil (DGAC) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which exists on certain Construcciones Aeronauticas, S.A. (CASA) Model C-212 series airplanes. It is necessary to modify the electrical system to provide electrical separation of the 26 volt bus bars. Independent power supplies to the navigation and communications systems are necessary to preclude the potential of a single failure, which could cause loss of all navigation and communications systems. To accomplish this, CASA developed Service Bulletin 212-24-33, Revision 2, dated July 3, 1984, which describes a modification of the electrical system. The DGAC has classified this service bulletin as mandatory.

This airplane model is manufactured in Spain and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist on airplanes of this model registered in the United States, an AD is proposed that would require compliance with the previously mentioned service bulletin.

It is estimated that 8 airplanes of U.S. registry would be affected by this AD, that it would take approximately 32 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Modification parts are estimated at $500 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $14,240.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($1,780). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

CASA: Applies to CASA Model C-212 series airplanes as listed in CASA Service Bulletin 212-24-33, Revision 2, dated July 3, 1984, certificated in any category. Compliance is required within 90 days after the effective date of this AD. To preclude the loss of navigation and communications capability due to a single electrical system failure, accomplish the following, unless previously accomplished:

A. Modify the electrical system in accordance with CASA Service Bulletin 212-24-33, Revision 2, dated July 3, 1984.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received this document from the manufacturer may obtain copies upon request to Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington on January 14, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-1362 Filed 1-22-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-148-AD]

Airworthiness Directives: Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require inspection and modification of the escape slide or slide/raft cover release mechanism on Boeing Model 767 series airplanes. This action is prompted by reports of escape slides failing to inflate automatically when deployed due to corrosion and excessive friction in the slide cover release mechanism. While the slide can be inflated using the manual inflation handle, failure of the slide to inflate automatically may cause a delay in inflation or the assumption that the slide is not usable, thus delaying and possibly jeopardizing successful emergency evacuation of an airplane.

DATES: Comments must be received on or before Feb. 24, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-148-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commerical Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. The information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Roger S. Young, Airframe Branch, ANM-120S; telephone (206) 431-2929. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should indentify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rule Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the subtance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-148-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 96168.

Discussion

There have been two reports of Boeing Model 767 escape slides on airplanes that had been in service almost three years that did not automatically inflate when deployed inadvertently. The slide pack cover did not release, which prevented the automatic inflation lanyard from firing the pressure vessel. No attempt was made to use the manual inflation handle. Operating the manual handle would fire the inflation pressure vessel, which would inflate the slide.

The slide pack cover failed to release due to excessive friction in the release mechanism, which was caused by corrosion and out-of-tolerance parts. Corrosion was also found on another release mechanism on another airplane during a fleet check.

Failure of the slide to operate properly could result in a delay in inflating the slide or a mistaken conclusion that the slide is unusable, thus delaying and possibly jeopardizing an emergency evacuation.

Boeing released Service Bulletin 767-25A0071, dated September 27, 1985, which describes a specific inspection procedure to be used to check for proper operation of the slide release mechanism on all Model 767 series airplanes.

Since this condition may exist or develop on other airplanes of the same type design, the proposed amendment would require inspection and modification of the slide release mechanism following the procedures in Boeing Service Bulletin 767-25A0071.

It is estimated that 57 airplanes of U.S. operators would be affected by this AD, that it would take approximately 8 manhours per airplane to accomplish the require actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $18,240.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it it certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 767 airplanes are operated by small entities.

A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 767 airplanes, certificated in any category, equipped with slide packboard Part Number 416T2003–14 or slide/raft packboard Part Number 416T2003–15. To ensure that the escape slide release mechanism operates properly, accomplish the following, unless already accomplished:

A. Accomplish the inspection, test, and modification procedures in accordance with Boeing Service Bulletin 767–25–A0071, dated September 27, 1985, or later FAA-approved revisions, as follows:

1. For packboards that have been in service over twenty-one months on the effective date of this AD, accomplish the inspection and modification within the next three months.

2. For all other packboards, accomplish the inspection and modification prior to the accumulation of twenty-four months time-in-service.

B. All packboards must meet the test requirements of Boeing Service Bulletin 767–25–A0071, Part III.C., Figure 1, circle Note 4, after modification. Packboards not meeting these requirements must not be placed in service.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received the appropriate service document from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. The document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 14, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–1365 Filed 1–22–86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 163

[Docket No. 85N–0501]

Chocolate Products; Advance Notice of Proposed Rulemaking on the Possible Amendment of the U.S. Standards of Identity

Correction

In FR Doc. 85–28350 beginning on page 49398 in the issue of Monday, December 2, 1985, make the following correction:

On page 49405, in the first column, in the second line of paragraph (b), insert "or" after the first "Chocolate".

BILLING CODE 1505-01-M

21 CFR Part 870

[Docket No. 83N–0190]

Medical Devices; Invitation for Offers to Submit or to Develop a Performance Standard for Vascular Graft Prosthesis of 6 Millimeters and Greater Diameter

Correction

In FR Doc. 86–111 beginning on page 564 in the issue of Monday, January 6, 1986, make the following correction: On page 566, in the first column, in the first line, "antogenous" should read "autogenous".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR–198–82]

Return of Partnership Income

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the income tax regulations relating to partnership returns. The proposed regulations require partnerships to furnish certain return information to their partners and revise the exceptions to the partnership filing requirement. Changes to the applicable tax law were made by the Tax Equity and Fiscal Responsibility Act of 1982. The regulations would provide guidance for determining what information a partnership must furnish to its partners and when certain partnerships must file partnership returns.

DATES: Written comments and requests for a public hearing must be delivered or mailed by March 24, 1986. The regulations are proposed to be effective for partnership taxable years beginning after September 3, 1982. For exceptions to this effective date, see the text of the regulations.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–198–82), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Beverly A. Baughman of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224 (Attention: CC:LR:T) (202–566–3297).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 6031 of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to sections 403 and 404 of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 669).

Information To Be Furnished to Partners

Before the enactment of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), a partnership required under section 6031 to file a partnership return was not required by statute to furnish information to its partners. TEFRA amended section 6031 to require the partnership to furnish to every person who was a partner in the partnership at any time during the taxable year a copy of the information on the partnership return to the extent required by regulations.

The proposed regulations required the partnership to give each partner a statement showing that partner's distributive share of partnership income, gain, loss, deduction or credit and, to the extent required under the instructions for the partnership return, any additional information from the

partnership that is necessary to enable the partner to determine the correct income tax treatment of an item related to the partnership. For example, the partnership may be required to furnish the information on partnership liabilities necessary for purposes of determining the application of section 465 (relating to limitation of deductions to amount at risk) to partners with respect to partnership activities.

Exception to Filing Requirement

Existing § 1.6031–1 provides exceptions from the requirement that a partnership return be filed for two classes of partnerships: partnerships electing exclusion from the partnership provisions of the Code under section 761(a) and partnerships that neither carry on any business in the United States nor derive any income from sources within the United States. Section 404 of TEFRA in effect nullified these exceptions in any case in which the tax liability of any United States person is affected by items flowing from a partnership. That section, however, authorizes new regulations to provide exceptions from the filing requirement.

The proposed regulations would provide exceptions for partnerships making the election under section 761(a) and for certain foreign partnerships with no United States business or income. Every domestic partnership (except a partnership making the election under section 761(a) or an inactive one that in a given taxable year conducts no business and has no income or deductions from any sources whatsoever) would be required to file a return even if it has no United States business and no United States income.

The proposed regulations provide an exception from the filing requirement for a foreign partnership carrying on no business in the United States and deriving no income from sources within the United States unless United States persons hold a specified interest in the partnership. The proposed regulations require that a foreign partnership file a partnership return for a taxable year if at any time during that taxable year an aggregate of 25 percent or more of any item of income, gain, loss, deduction or credit of the partnership for the taxable year is allowable to a United States person or persons. For purposes of these rules, interests held by a pass-thru partner (such as another partnership or trust) that is not a United States person are also treated as held by each indirect partner to the extent that the indirect partner holds an interest in the foreign partnership through that pass-thru partner.

The percentage interest of an indirect partner in a foreign partnership is determined by multiplying the percentage interest of the pass-thru partner in any item of income, gain, loss, deduction, or credit of the foreign partnership by (1) the percentage interest of the indirect partner in that item of income, gain, loss, deduction, or credit of the pass-thru partner, when the pass-thru partner is a partnership, and (2) the percentage of the indirect partner's actuarial interest in the trust or estate when the pass-thru partner is a trust or estate.

The Internal Revenue Service recognizes that the rule requiring that interests held by indirect partners be taken into account may cause concern among certain taxpayers because a foreign partnership may not know whether it has indirect partners, and it may be very difficult for that partnership to obtain such information. Additionally, the consequences of failing to meet the filing requirement can be harsh. Therefore, the Service would appreciate comments on this rule.

If a foreign partnership would not be required to file a partnership return but for the 25 percent rule discussed above, the draft regulations provide that the reporting requirements of paragraphs (a)(2) and (b) of proposed § 1.6031–1, which relate to a specific partner or partners, apply only with respect to partners who are United States persons or pass-thru partners through which United States persons hold interests in the foreign partnership as indirect partners. Thus, although the foreign partnership must report, for example, all items of gross income and all allowable deductions, it need not report the distributive shares of its partners other than for its partners who are United States persons or pass-thru partners through which United States person are indirect partners.

The draft regulations exclude from the definition of United States person, with respect to any partnership, any individual who is a bona fide resident of Puerto Rico (which is treated as a possession for certain tax purposes), the Virgin Islands, Gaum or any other United States possession if no item of the partnership is taken into account in determining the United States income tax obligation of the individual that is required to be paid to the United States Treasury.

Importance of Filing Requirement

If a partnership that is not a small partnership under section 6231(a)(1)(B) is required to file a return under section 6031 but fails to do so, the period of limitations on assessment of tax attributable to items of that partnership remains open indefinitely under section 6229(a).

Effective Dates

These regulations are proposed to be effective with respect to partnership taxable years beginning after September 3, 1982. A partnership that would be exempt from the filing requirement under the existing regulations, however, will not be required to file a partnership return for any partnership taxable year ending on or before the 90th day after the date on which a Treasury decision on this subject appears in the Federal Register.

Special Analysis

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required.

Pursuant to 5 U.S.C. 605(b), the Secretary of the Treasury has certified that the requirements of the Regulatory Flexibility Act do not apply to this notice of proposed rulemaking because the proposed regulations will not have a significant economic impact on a substantial number of small entities. The only partnerships that the proposed regulations would for the first time require to file partnership returns are foreign partnerships in which United States persons hold a substantial interest; few small entities hold interests in foreign partnerships. The information that the proposed regulations require a partnership to furnish to its partners is limited to the information that the partners need to determine their own tax liability.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be made available for public inspection and copying. A public hearing will be held upon written request of any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register. The collection of information requirements contained herein have been submitted for OMB review under the Paperwork Reduction Act, and comments on them should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New

Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments to OMB also send copies of the comments to the Service.

Drafting Information

The principal author of these proposed regulations is Beverly A. Baughman of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations both on matters of substance and style.

List of Subjects in 26 CFR 1.6001–1—1.6109–2

Income taxes, Administrative practice and procedure, Filing requirements.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

PART 1—[AMENDED]

Paragraph 1. The authority citation for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 1.6031-1 also issued under 26 U.S.C. 6031 and section 404 of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 669).

Par. 2. Section 1.6031-1 is revised to read as follows:

§ 1.6031-1. Return of partnership income.

(a) *In general—(1) Return required.* Except as otherwise provided in this section, every unincorporated organization, whether domestic or foreign, defined as a partnership in section 761(a), through or by means of which any business, financial operation, or venture is carried on, shall make a return for each taxable year on the form prescribed for the partnership return. For purposes of this section, an unincorporated organization will not be considered, within the meaning of section 761(a), to carry on a business, financial operation, or venture as a partnership in any taxable year in which the organization neither receives income nor incurs any expenditures treated as deductions or credits for federal income tax purposes. The return shall be made for the taxable year of the partnership irrespective of the taxable years of the partners. For taxable years of a partnership and of a partner, see section 706 and § 1.706-1. For signing of a partnership return, see § 1.6063-1.

(2) *Content of return.* The return shall state specifically the items of partnership gross income and the deductions allowable by subtitle A of the Code and shall include the names and addresses of all the partners (as defined in section 7701(a)(2)) and the amount of the distributive shares of income, gain, loss, deduction, or credit allocated to each partner. Notwithstanding any exemption otherwise available under § 301.6109-1(g), the return shall also include the identifying numbers of all the partners; provided, however, that any foreign partnership that would be exempted from the requirement to file a return under paragraph (d)(1) of this section but for the provisions of paragraph (d)(2)(i) of this section shall include in its return the identifying numbers of only those partners who are described in paragraph (d)(2)(iv). To the extent required by the form prescribed for the partnership return or by the instructions accompanying that form, the return shall also provide any additional information that may be necessary to determine the application to the partnership or the partners of particular provisions of subtitle A of the Code with respect to items related to the partnership. For example, the form may require information with respect to partnership liabilities for purposes of determining the application of section 465 (relating to limitation of deductions to amount at risk) to the partners with respect to partnership activities.

(3) *Special rule.* Except in the case of an unincorporated organization deemed to be excluded from the application of subchapter K in the manner described in § 1.761-2(b)(2)(ii) for the first year of its existence, an unincorporated organization described in § 1.761-2(a) shall file a partnership return for the first taxable year in which the participants by a formal agreement undertake to engage in joint operations or, in the absence of a formal agreement, for the first taxable year in which the participants with respect to the joint use of property jointly have income, or make or incur any expenditures treated as deductions or credits for Federal income tax purposes. Additionally, if an organization described in § 1.761-2(a) (other than an unincorporated organization deemed to be excluded from the application of subchapter K in the manner described in § 1.761-2(b)(2)(ii) for the first taxable year of its existence) does not elect under section 761 and the regulations thereunder to be excluded from the application of all the provisions of subchapter K of chapter 1 of the Code, it is required to file a return for each taxable year subsequent to its first taxable year in accordance with the requirements of this section until an election is made in accordance with § 1.761-2(b)(2)(i). Where no annual accounting period has been adopted by an organization described in § 1.761-2(a), its taxable year shall be the calendar year in accordance with section 441(g). For special rules in the case of an organization making the election for exclusion under section 761, see § 1.761-2(b)(2)(i) and (c) and paragraph (c) of this section.

(b) *Information required to be provided to partners—(1) In general.* Any partnership required under paragraph (a)(1) of this section to file a partnership return for a taxable year shall furnish, on or before the day on which that return is filed, to every person who was a partner (as defined in section 7701(a)(2)) at any time during that taxable year a statement showing that person's distributive share of partnership income, gain, loss, deduction or credit. To the extent required by the form or the accompanying instructions, that statement shall also provide any additional information that may be necessary to determine the applicatioin to the partner of particular provisions of subtitle A of the Code with respect to items related to the partnership.

(2) *Information may be provided to agent.* If a partner has designated another person, such as an attorney or an investment advisor, as the partner's agent in dealing with the partnership, the partnership may provide the information referred to in paragraph (b)(1) of this section to that other person instead of the partner.

(3) *Penalties.* For penalties for failure to comply with the requirements of section 6031(b) and this paragraph (b), see section 6678(a)(3)(F).

(c) *Unincorporated organizations excluded from the application of subchapter K—(1) Wholly excluded—(i) Filing for the first year with respect to an election.* Any unincorporated organization with respect to which under section 761(a) an election to be excluded from all the provisions of subchapter K of chapter 1 of the Code has been made in the manner described in § 1.761–2(b)(2)(i) shall file the form prescribed for the partnership return for the first year with respect to which such an election has been made. That return shall, in lieu of the information otherwise required, contain or be accompanied by the information required by § 1.761–2(b)(2)(i).

(ii) *No requirement to file.* Except as otherwise provided in paragraph (c)(1)(i) of this section, an unincorporated organization which is wholly excluded

from the application of subchapter K need not file a partnership return.

(2) *Partially excluded.* Any unincorporated organization excluded from the application of part of subchapter K of chapter 1 of the Code shall file a return on the form prescribed for the partnership return containing such information as the Commissioner may require. See section 761 and § 1.761–2(c).

(d) *Foreign partnerships having no United States business*—(1) *General rule.* Except as otherwise provided in paragraph (d)(2), a foreign partnership that engages in no trade or business in the United States and derives no income from sources within the United States is not required to file a partnership return.

(2) *Special rule for certain foreign partnerships*—(i) *In general.* Notwithstanding paragraph (d)(1) of this section, a foreign partnership shall file a partnership return for a partnership taxable year if at any time during that year an aggregate of 25 percent or more of any item of income, gain, loss, deduction, or credit of the partnership is allocable to a United States person or persons.

(ii) *Interests held indirectly through pass-thru partners that are not United States persons.* If an interest in any item of income, gain, loss, deduction, or credit of a foreign partnership is held by a pass-thru partner that is not a United States person, then for purposes of this paragraph (d)(2) that interest shall be treated as held by each indirect partner to the extent that the indirect partner holds an interest in the foreign partnership through that pass-through partner. No person shall be treated as holding an interest in a foreign partnership by virtue of holding an interest in a pass-thru partner which is a United States person; the interest held by any such pass-thru partner shall be treated as an interest held by a United States person for purposes of this paragraph (d)(2).

(iii) *Determination of interest held by an indirect partner in a foreign partnership.* For purposes of paragraph (d)(2)(ii) of this section, the percentage interest of an indirect partner in a foreign partnership shall be determined by multiplying the percentage interest of the pass-thru partner in any item of income, gain, loss, deduction, or credit of the foreign partnership by—

(A) In the case of a pass-thru partner that is a partnership, the percentage interest of the indirect partner in that item of income, gain, loss, deduction, or credit of the pass-thru partner, or

(B) In the case of a pass-thru partner that is a trust or estate, the percentage of the indirect partner's actuarial interest in the trust or estate.

(iv) *Certain foreign partnerships.* In the case of a foreign partnership that would not be required to file a partnership return but for the provisions of paragraph (d)(2)(i) of this section, those requirements of paragraphs (a)(2) and (b) of this section which relate to a specific partner or partners apply only with respect to partners who are United States persons or pass-thru partners through which United States persons hold interests in the partnership as indirect partners. Thus, although the foreign partnership must report all items of gross income and all allowable deductions, it need not, for example, report the distributive share of its partners other than for its partners who are United States persons or pass-thru partners through which United States persons are indirect partners.

(v) *Examples.* The provisions of this paragraph (d)(2) may be illustrated by the following examples:

Example (1). L, a foreign partnership, engages in no trade or business in the United States and derives no income from sources within the United States. For taxable year 1985 all of L's income comes from investment activity and a retail business. Fifteen United States persons are partners in L. For 1985 each of these partners is allocated 2 percent of L's income from investment activities. Because United States persons are allocated 30 percent (15×2) of an item of L's income for taxable year 1985, L must file a partnership return for that year under section 6031 pursuant to paragraph (d)(2)(i) of this section. On that return L must include the information required with respect to partners under paragraph (a)(2) of this section only with respect to the fifteen partners who are United States persons. Similarly, L must furnish the statement required under paragraph (b)(1) of this section only to those fifteen partners.

Example (2). M, a foreign partnership, engages in no trade or business in the United States and derives no income from sources within the United States. All of M's income comes from investment activity. For M's taxable year 1985, 26 percent of M's income is allocable to N, a domestic partnership with three equal partners, one of whom is not a United States person. Because all of this 26 percent share is allocable to N as a pass-thru partner which is a United States person for purposes of applying paragraph (d)(2)(i) of this section, M is required to file a partnership return under section 6031 for its taxable year 1985.

Example (3). O, a foreign partnership, engages in no trade or business in the United States and derives no income from sources within the United States. All of O's income is from a retail business. For O's taxable year 1985, 20 percent of O's income is allocable to P, a partnership that is not a United States person. All of P's income is also from a retail business. A, a United States person, is a partner in P and 50 percent of P's income for 1985 is allocable to A. A's interest in O as an indirect partner through P is 10 percent (20%x50%). A also holds a separate interest in O as a direct partner and 15 percent of O's income is allocable to A because of the separate interest. Because A in the aggregate is allocated 25 percent (10%+15%) of O's income for purposes of applying paragraph (d)(2)(i) of this section, O, is required to file a partnership return under section 6031 for its taxable year 1985.

(3) *Returns of information with respect to partnership required of partners who are United States persons.* If a United States person is a partner in a partnership described in paragraph (d)(1) of this section which is not required to file a partnership return, the district director or director of the service center may require that person to render such statements or provide such information as is necessary to show whether or not that person is liable for tax on income derived from that partnership. In addition, if an election in accordance with the provisions of section 703 (relating to elections affecting the computation of taxable income derived from a partnership) or section 761 (relating to the election to be excluded from the application of all or part of subchapter K, chapter 1 of the Code) is to be made by or for the partnership, a return on the form prescribed for the partnership return shall be filed for the partnership. See section 6063 and § 1.6063–1, relating to the authority of a partner to sign a partnership return. The filing of one such return for a taxable year of the partnership by a partner who is a United States person shall constitute a filing for the partnership of a partnership return.

(4) *Exclusion for satellite organizations.* The return requirement of section 6031 and this section shall not apply to the International Telecommunications Satellite Organization, the International Maritime Satellite Organization, or any organization which is a successor of either of these organizations.

(5) *Meaning of terms*—(i) *Pass-thru partner.* For the meaning of the term "pass-thru partner," see section 6231(a)(9).

(ii) *Indirect partner.* For the meaning of the term "indirect partner," see section 6231(a)(10).

(iii) *United States person*—(A) *In general.* For purposes of this section the term "United States person" has the meaning assigned to it by section 7701(a)(30) of the Code, except that with respect to any taxable year of a partnership the term does not include any individual who is a bona fide resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam or any

other possession of the United States, if no item of income, gain, loss, deduction or credit of the partnership for that taxable year is taken into account in determining an income tax obligation of the individual under subtitle A of the Code that is required to be paid to the Treasury of the United States.

(B) *Example.* The provisions of this paragraph (d)(4)(iii) may be illustrated by the following example:

Example. S is a partnership organized in Denmark. C, an individual who is a citizen of the United States, is a bona fide resident of Guam and a partner in S. S and C use the calendar year as their taxable year. For 1985, C files his tax return with Guam pursuant to section 935. For purposes of applying this section to S for 1985, C is not considered to be a United States person.

(e) *Place and time for filing returns*—(1) *Place for filing*—(i) *Partnership with United States business or United States income.* The returns of partnerships engaged in trade or business, or having income from sources, within the United States shall be filed—

(A) With the service center for the internal revenue district in which the partnership has its principal office or principal place of business in the United States, or

(B) With the Philadelphia Service Center, Philadelphia, Pennsylvania 19255 if the partnership has no office or place of business in the United States.

(ii) *Partnership with no United States business and no United States income.* If a partnership engages in no trade or business in the United States and has no income from sources within the United States, but is required to file a return under paragraph (d)(2) of this section, it shall file its partnership return with the Philadelphia Service Center, Philadelphia, Pennsylvania 19255.

(iii) *Return filed under paragraph (d)(3).* A partnership return filed under the authority of paragraph (d)(3) of this section shall be filed with the internal revenue officer with whom the partner who is a United States person files his separate income tax return.

(2) *Time for filing.* The return of a partnership shall be filed on or before the fifteenth day of the fourth month following the close of the taxable year of the partnership, except that the return of a partnership consisting entirely of nonresident aliens shall be filed on or before the fifteenth day of the sixth month following the close of the taxable year of the partnership.

(f) *Effective date*—(1) *In general.* This section applies with respect to partnership taxable years beginning after September 3, 1982. For partnership taxable years beginning before September 4, 1982, see 26 CFR 1.6031–1 (Rev. as of April 1, 1984).

(2) *Special rules.* If—

(i) The taxable year of a partnership ends on or before the 90th day after a Treasury decision on this subject appears in the **Federal Register**, and

(ii) The partnership would not be required to file a partnership return for that year if § 1.6031–1 (Rev. as of April 1, 1984) were applied to the partnership for that year in place of paragraphs (a) through (e) of this section,

the partnership shall not be required to file a partnership return for that taxable year.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 86–1462 Filed 1–22–86; 8:45 am]

BILLING CODE 4830–01–M

POSTAL SERVICE

39 CFR Part 111

Three-Digit Sortation of ZIP+4 Presort Mailings

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would create optional preparation procedures for ZIP+4 Presort First-Class Mail that would eliminate unnecessary separations, and complement the Postal Service's automated processing system. Generally, the optional procedures would be limited to mailings consisting exclusively of pieces destined for areas served by Postal Service facilities with automated mail processing equipment. For these mailings the sortation of qualifying pieces to the 5-digit ZIP Code level would not be required, only the sortation of the mailing to the 3-digit ZIP Code level. Thus, the mailer would be eligible for the Presort discount on each piece in a group of fifty or more pieces addressed for delivery in a 3-digit ZIP Code area without having to presort the mailing to the 5-digit level. Under this optional procedure, mailers could combine Presort and ZIP+4 Presort mailings, provided that (1) ZIP+4 codes are included in the addresses of at least 85 percent of the pieces; (2) the mailing contains at least 500 pieces which bear a ZIP+4 code; and (3) all pieces in the combined mailing meet the machinability and readability requirements established for ZIP+4 Presort mailings. (See Domestic Mail Manual (DMM) 324.)

New verification and documentation procedures are also proposed for combined presort mailings entered under either existing or proposed preparation options The verification and documentation proposals accommodate mailers who develop reliable techniques for measuring ZIP+4 code usage, as well as mailers who enter mail for a mailing list or mailing cycle (for example, a billing cycle) over several days.

DATES: Comments on this prosoed rule must be received on or before February 24, 1986.

ADDRESS: Written comments should be directed to Gerald Robinson, Law Department, U.S. Postal Service Headquarters, Room 5056-North, 75 L'Enfant Plaza West, SW., Washington, D.C. 20260–1141. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in Room 5056-North at the above address.

FOR FURTHER INFORMATION CONTACT: Gerald Robinson, (202) 268–2983.

SUPPLEMENTARY INFORMATION: On February 1, 1985, the Postal Service published a proposed rule on combined Presort and ZIP+4 Presort First-Class mailings, in which it announced that it planned to relax presortation requirements for ZIP+4 Presort mailings, "to provide for 3-digit ZIP Code presortation only." 50 FR 4709, 4711. As explained briefly in that notice, and more comprehensively below, this change is designed to improve the efficiency of postal operations in an automated processing environment, and is expected to simplify mailer preparation of ZIP+4 mailings.

Background

Presort First-Class Mail was established in 1976 as two separate classifications of First-Class Mail (one for cards and the other for letters and small parcels) with a discount off the applicable regular rate for those mail pieces presorted by the mailer prior to presentation to the Postal Service.

This rate discount classification is generally defined in the Domestic Mail Classification Schedule in section 100.022 which states: Presorted first-class mail is first-class mail other than zone-rated (priority) mail which is presented in a single mailing of 500 or more pieces, properly prepared and presorted.

Section 100.04, Preparation of Mail, specifies in 100.042 that:

First-Class Mail mailed under section 100.022 must be prepared as follows:

a. All pieces in a mailing must be presented in a manner specified by the Postal Service that preserves the presort and uniform orientation of the pieces.

b. All pieces in a mailing must bear markings identifying them as presorted first-class mail, as required by the Postal Service.

The requirements for presortation appear in footnote 1 to Rate Schedule 100, First-Class Mail. That footnote states, in relevant part, that: Presorted First-Class Mail must be presented in a single mailing of at least 500 pieces properly prepared and presorted. The 5-digit presort rate applies only to each piece of a group of ten or more pieces destined for the same 5-digit ZIP code *or* each piece of a group of 50 or more pieces destined for the same 3-digit ZIP code. (Emphasis added.)

Thus, mail pieces presorted both to 5-digit ZIP Code delivery areas and to 3-digit ZIP Code delivery areas receive the same Presort rate discount.

Since this discount was introduced, Presort First-Class mailers have been required, by postal regulations (currently published in the DMM), to separate and package groups of 10 or more pieces destined for the same 5-digit ZIP Code delivery area as the first step of presorting. After all available 5-digit packages are prepared, mailers are required to prepare packages of 50 or more pieces destined for the delivery area represented by a 3-digit ZIP Code prefix. Each piece in both the 5-digit and 3-digit packages qualifies for the same presortation discount. This requirement that mailers prepared 5-digit packages of presorted mail before proceeding to prepare 3-digit packages, sometimes called the "maximization" requirement, remains in effect today and is based on the need to achieve the highest postal efficiencies from the Presort program. Mailer presortation of mail destined for specific 5-digit ZIP Code areas has enabled the Postal Service to avoid, in addition to distribution at the origin office, a piece-handling operation at the destinating office, in both manual and mechanized mail processing operations. In this operation, the "incoming primary distribution," the Postal Service generally sorts mail for 3-digit areas to 5-digit ZIP Code designations. The Postal Service now proposes to change these regulations and not require the initial 5-digit sortation step for certain ZIP+4 Presort First-Class mailings. Changes in postal operations brought about through automation and the ZIP+4 program make the proposed preparation requirements most efficient for purposes of Postal Service processing.

Automated Letter Mail Processing and the ZIP+4 Program

The Postal Service embarked on a program of mail processing automation in the early 1980's. Automated letter mail processing equipment is now operational in 118 large Postal Service facilities. A second phase of the automation program will augment the automation already in place at the 118 facilities, and will bring automated letter mail processing to more than 90 additional facilities. As currently designed, the automated processing equipment falls into two categories, optical character reader/channel sorter (OCR) and bar code sorter (BCS) equipment.

OCR equipment currently deployed scans city, state, and ZIP Code information in the last lines of the address block of letter-size mail. If the data are successfully recognized, a bar code is sprayed on the face of the envelope, in the lower right corner, and the mail piece is directed to a bin, or "stacker," based upon ZIP Code information.

BCS equipment scans only the bar code, and directs mail to stackers solely on the basis of that code. Because it does not contain the extensive character recognition equipment and software of OCR equipment, BCS equipment is simpler and less expensive than OCR equipment. Both types of equipment are highly productive, processing mail at the rate of 10,000 pieces per work hour. By contrast, the rate for mechanized letter distribution activities is typically 1,500–1,800 pieces per work hour.

OCR and BCS equipment yield the greatest economic benefit when used in conjunction with the ZIP+4 code. If a mail piece is compatible with automated processing equipment (that is, if its shape is within defined limits, if address-block information is presented in machine-readable type, and if the address includes a correct ZIP+4 code), the automated processing equipment can be used to direct the piece to the appropriate letter carrier at destination.

Presorted ZIP+4 mail is processed initially on OCR equipment, which applies a bar code corresponding with the complete ZIP+4 code, and then performs an initial sortation, or distribution, in the same operation. The subsequent distribution to carrier route can be performed using BCS equipment. Unpresorted ZIP+4 mail is sent through automated processing equipment at both origin and destination postal facilities. Presort ZIP+4 mail, the subject of this proposed rule, is sent through automated equipment only at the destination facility, because mailer preparation enables the Postal Service to distribute and dispatch packages, bundles or trays (rather than individual pieces) of this mail from the origin to the destination postal facility.

At automated destinations, 5-digit packages of ZIP+4 presorted mail are processed on OCR equipment with the same number of handlings as would be required for 3-digit packages. This mail is subsequently processed on BCS equipment and sorted directly to carrier route. Since an OCR is programmed to process mail for an entire 3-digit area in a single operation, there is no benefit to the Postal Service in receiving 5-digit packages when processing ZIP+4 Presort mail on OCR equipment. Therefore, the proposed regulations would permit the preparation of this mail in 3-digit separations. Mailers would then prepare trays directed to 3-digit areas, SCFs, or ADCs. The proposed changes are expected to enhance the ability of mailers to prepare additional qualifying Presort mail pieces bearing the ZIP+4 code.

Current Proposal

The current proposal is designed to eliminate the unnecessary mailer preparation requirements now imposed upon presorted ZIP+4 mail; it is limited in several respects, described below, in order to avoid inefficiencies during the period of transition to comprehensive postal automation.

Of first importance is the fact that this proposal is for the creation of an *optional* procedure that ZIP+4 Presort mailers may elect to use in preparing a qualifying portion of their presorted mail. Under the option, ZIP+4 Presort rates would be available for each piece of a group of 50 or more pieces addressed for delivery within any 3-digit ZIP Code areas served by the 118 currently automated postal facilities. Use of this option would require that mail for any of the specified 3-digit areas be presented in a separate ZIP+4 Presort mailing of at least 500 ZIP+4 coded pieces.

Thus, presorted mail addressed to other 3-digit areas (and, at the mailer's option, mail addressed to any or all of the qualified 3-digit areas) would remain subject to current preparation requirements set forth in DMM 365. The 3-digit prefixes qualified for this option are listed in proposed Exhibit 122.63m below.

Presorted mail entered under the proposed option would be subject to two requirements not currently applicable to combined Presort and ZIP+4 Presort mailings. First, for mail entered under the optional procedure, mailers will not be permitted to combine ZIP+4 and non-ZIP+4 presorted mail without limitation. Instead, a minimum ZIP+4 addressing level of 85 percent would be required for these combined mailings.

Second, all pieces in a combined mailing would be required to meet the OCR-readability requirements currently applicable only to the ZIP+4 portion of combined mailings.

The minimum ZIP+4 addressing level of 85 percent is necessary to limit the inefficiencies produced by the combined mailing procedure. Non-ZIP+4 Presort mailings are not sent through automated processing equipment, because a large portion of the mail generally is presorted to 5-digit destinations, the finest separation currently achievable through the use of automated processing equipment for non-ZIP+4 coded mail. When ZIP+4 and non-ZIP+4 Presort mailings are combined, the automated distribution of most of the non-ZIP+4 pieces is a wasted operation. The unlimited combination, or "commingling" of mailings has been permitted in order to encourage mailers to undertake the conversion to the ZIP+4 system; however, the Postal Service noted in February, 1985, that "[o]nce 3-digit ZIP Code sortation is permitted for Presort ZIP+4 mailings, a high level of ZIP+4 coded pieces in those mailings is necessary to ensure that distribution savings are produced through the automation of the incoming secondary sortation process." 50 FR 4711.

The same **Federal Register** notice stated that the minimum ZIP+4 addressing level "would be set at a level consistent with the match rates that mailers, with well-maintained address lists, might reasonably expect to achieve using state-of-the-art software available at the time." *Id.* To determine this level, the Postal Service examined its manual list conversion experience, studied the current state of the conversion software market, and surveyed those customers that are currently entering ZIP+4 Presort mail. The survey indicated that, of Presort mail entered under the ZIP+4 program, 97 percent of the volume is entered in mailings at or above an 85 percent ZIP+4 addressing level. Of current Presort ZIP+4 customers, 81 percent can prepare mailings with at least an 85 percent ZIP+4 addressing level. Moreover, based upon this mailer survey, there is very little improvement in the number of additional mailers or mail volume that would be able to qualify for the Presort ZIP+4 program if the minimum qualifying percentage of ZIP+4 pieces was reduced to 80 percent. However, as the minimum percentage is raised above 85 percent the effect on eligibility becomes significant. Indeed, at levels over 90 percent, qualification of half of current ZIP+4 Presort mailers could be expected, at best.

The Postal Service's experience with its manual list conversion service confirms the market survey's results. The Postal Service's contractor has achieved an average conversion rate of 87 percent.

Based upon these findings, the minimum ZIP+4 addressing level of 85 percent in proposed DMM 366.11b appears to be the most appropriate level that is readily achievable by most mailers. Such a requirement is also acceptable to the Postal Service, as it balances the goals of promoting mailer participation in the ZIP+4 program, and of limiting the inefficiencies inherent in the combined mailing procedure.

The second requirement, OCR readability, is included in proposed DMM 366.11c. OCR readability is necessary for the maintenance of efficient processing operations for the non-ZIP+4 mail extracted from combined mailings by OCR equipment. As noted above, OCR processing of most non-ZIP+4 Presort mail is not productive; it is allowed to occur only in the case of combined mailings. When non-ZIP+4 mail is separated from ZIP+4 mail, OCR-readability is essential to ensure that automated equipment can be used to route the mail to the appropriate point in the non-automated mailstream.

These two requirements have been waived temporarily for mail currently entered in combined Presort and ZIP+4 Presort mailings. *See* DMM 365.2. This proposed rule, which would only create an optional procedure which ZIP+4 Presort mailers may elect to use, would have no effect on those temporary waivers.

The proposed rule would carry forward current verification methods for combined mailings, and add a new option in proposed DMM 365.4. Under proposed DMM 366.5, all postage payment and documentation options generally available for combined mailings would be extended to mail entered under the new option. The new procedure, which would be applicable to all combined mailings, would apply streamlined documentation requirements to mailers whose ascertainment methods are approved by postal officials, and whose use of approved methods are subject to on-site inspection by the Postal Service. Proposed DMM 365.5 and 366.6 would also provide for mailing statements applicable to entire mailing lists or cycles. In order to accommodate mailers who do not present a complete mailing cycle or mailing list (for example, a month's bills) in a single mailing, the proposed rule would allow for presentation to the Postal Service over a period of several days.

Effects of Proposed Rule

Implementation and utilization of the proposed option would enable the Postal Service to improve its efficiency in the processing of presorted ZIP+4 mail. Mail entered under the option will enable the Postal Service to take fuller advantage of automated processing, by eliminating the need to open and combine packages of mail presorted to 5-digit ZIP Code destinations. The mail would be prepared in the most appropriate manner for immediate and efficient processing on the automated equipment.

The proposed option would also simplify the preparation tasks undertaken by mailers in the Presort program. The number of presortation levels will be reduced, and it is anticipated that many mailers will be able to complete their mail preparation activities with fewer "passes" or internal sorting operations. The Postal Service expects that the availability of streamlined preparation requirements will encourage broader utilization of the ZIP+4 code, so that the cost reductions associated with automated letter mail processing can be more rapidly achieved.

As the Postal Service's automation program expands to more facilities and more 3-digit ZIP Code delivery areas, the Postal Service plans to expand the availability of the proposed preparation option to maximize the mail processing efficiencies achieved through automation.

Although exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revision of the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 404, 407, 408, 3001–3011, 3201–3219, 3403–3405, 3621, 5001; 42 U.S.C. 1973cc–13, 1973cc–14.

PART 122—ADDRESSES

2. In 122.6, add new Exhibits 122.63m, 122.6n and 122.630 to read as follows:

122.6 ZIP Code System

* * * * *

.63 Assignment of ZIP Codes

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Exhibit 122.63m—3-Digit Labeling List for Optional Combined Zip+4 and Prestored First-Class Mail

ZIP Codes authorized for inclusion in program as single ZIP Coded trays. First line of tray label to include the appropriate 3-digit ZIP Code prefix reflecting the tray's contents.

3-Digit Zip Code Prefix and Label for Single Zip Coded Tray

017, 020–022—Boston, MA 3–D ZIP
018, 109—Middlesex-Essex, MA 3–D ZIP
027–029—Providence, RI 3–D ZIP
030–034—Manchester, NH 3–D ZIP
060–061—Hartford, CT 3–D ZIP
063–066—New Haven, CT 3–D ZIP
070–073—Newark, NJ 3–D ZIP
074, 075, 078—Paterson, NJ 3–D ZIP
076—Hackensack, NJ 076
080–084—So. Jersey, NJ 3–D ZIP
085–087—Trenton, NJ 3–D ZIP
088, 089—New Brunswick, NJ 3–D ZIP
100–102—New York, NY 3–D ZIP
104—Bronx, NY 104
105–108—Westchester, NY 3–D ZIP
112—Brooklyn, NY 112
113—Flushing, NY 113
114—Jamaica, NY 114
115—W. Nassau, NY 115
117, 118—Hicksville, NY 3–D ZIP
120–123—Albany, NY 3–D ZIP
130–132—Syracuse, NY 3–D ZIP
140–143—Buffalo, NY 3–D ZIP
144–146—Rochester, NY 3–D ZIP
150–152—Pittsburgh, PA 3–D ZIP
170–172,178—Harrisburg, PA 3–D ZIP
180, 181, 183—Lehigh Valley, PA 3–D ZIP
189, 193, 194—Southeastern, PA 3–D ZIP
190, 191—Philadelphia, PA 3–D ZIP
197–199—Wilmington, DE 3–D ZIP
200, 202–205—Washington, DC 3–D ZIP
206–209—Prince Georges, MD 3–D ZIP
210–212, 214, 219—Baltimore, MD 3–D ZIP
220–223—No. Virginia, VA 3–D ZIP
244, 225, 230–232, 238—Richmond, VA 3–D ZIP
233–237—Hampton Roads, VA 3–D ZIP
250–253—Charleston, WV 3–D ZIP
270–274—Greensboro, NC 3–D ZIP
275–277—Raleigh, NC 3–D ZIP
280–282—Charlotte, NC 3–D ZIP
290–292—Columbia, SC 3–D ZIP
297—Charlotte, NC 297
300–303—Atlanta, GA 3–D ZIP
320, 322—Jacksonville, FL 3–D ZIP
327–329—Orlando, FL 3–D ZIP
330–332—Miami, FL 3–D ZIP
333—Ft. Lauderdale 333
334—W. Palm Beach, FL 334
335–337, 342—Tampa, FL 3–D ZIP
350–353, 355—Birmingham, AL 3–D ZIP
360, 361—Montgomery, AL 3–D ZIP
370–372—Nashville, TN 3–D ZIP
380–381, 386—Memphis, TN 3–D ZIP
390–392—Jackson, MS 3–D ZIP
400–402—Louisville, KY 3–D ZIP
410—Cincinnati, OH 410
430–433—Columbus, OH 3–D ZIP
434–436—Toledo, OH 3–D ZIP
440, 441—Cleveland, OH 3–D ZIP
442, 443—Akron, OH 3–D ZIP
450–452—Cincinnati, OH 3–D ZIP
453–455—Dayton, OH 3–D ZIP
460–462—Indianapolis, IN 3–D ZIP
470—Cincinnati, OH 470
471—Louisville, KY 471
480, 483—Royal Oak, MI 3–D ZIP
481, 482—Detroit, MI 3–D ZIP
488, 489—Lansing, MI 3–D ZIP
490, 491—Kalamazoo, MI 3–D ZIP
493–495—Grand Rapids, MI 3–D ZIP
500–503—Des Moines, IA 3–D ZIP
515, 516—Omaha, NE 3–D ZIP
530–534—Milwaukee, WI 3–D ZIP
535–538—Madison, WI 3–D ZIP
540, 550, 551—Saint Paul, MN 3–D ZIP
553, 554—Minneapolis, MN 3–D ZIP
600–603—No. Suburban, IL 3–D ZIP
604, 605—So. Suburban, IL 3–D ZIP
606—Chicago, IL 606
620, 622—St. Louis, MO 3–D ZIP
626–627—Springfield, IL 3–D ZIP
630, 631, 633—St. Louis, MO 3–D ZIP
640, 641, 660–662—Kansas City, MO 3–D ZIP
670–672—Wichita, KS 3–D ZIP
680, 681—Omaha, NE 3–D ZIP
700, 701—New Orleans, LA 3–D ZIP
707, 708—Baton Rouge, LA 3–D ZIP
720–722—Little Rick, AR 3–D ZIP
723—Memphis, TN 723
730, 731—Oklahoma City, OK 3–D ZIP
740, 741, 743—Tulsa, OK 3–D ZIP
750–753—Dallas, TX 3–D ZIP
760–761, 764—Fort Worth, TX 3–D ZIP
770–772, 774, 775—Houston, TX 3–D ZIP
780–782, 788—San Antonio, TX 3–D ZIP
786, 787, 789—Austin, TX 3–D ZIP
800–804—Denver, CO 3–D ZIP
835, 838—Spokane, WA 3–D ZIP
840, 841, 843, 844—Salt Lake City, UT 3–D ZIP
850, 852, 853, 855—Phoenix, AZ 3–D ZIP
856, 857—Tucson, AZ 3–D ZIP
870–872, 875—Albuquerque, NM 3–D ZIP
900—Los Angeles, CA 900
902–905—Inglewood, CA 3–D ZIP
906–908—Long Beach, CA 3–D ZIP
910–912—Pasadena, CA 3–D ZIP
913–196—Van Nuys, CA 3–D ZIP
917, 918—Alhambra, CA 3–D ZIP
920, 921—San Diego, CA 3–D ZIP
923–925—San Bernadino, CA 3–D ZIP
926–928—Santa Ana, CA 3–D ZIP
936, 937—Fresno, CA 3–D ZIP
940, 941, 943, 944—San Francisco, CA 3–D ZIP
945–948—Oakland, CA 3–D ZIP
950, 951—San Jose, CA 3–D ZIP
952, 953—Stockton, CA 3–D ZIP
956–958—Sacramento, CA 3–D ZIP
967–969—Honolulu, HI 3–D ZIP
970–972—Portland, OR 3–D ZIP
980, 981—Seattle, WA 3–D ZIP
983, 984—Tacoma, WA 3–D ZIP
986—Portland, OR 986
990–992—Spokane, WA 3–D ZIP

Exhibit 122.63n—Sectional Center Facility (SCF) Labeling List for Optional Combined Zip+4 and Presorted First-Class Mail

ZIP Codes Authorized for SCF Tray Make-Up.

3-Digit Zip Code Prefix and Label for SCF Tray

017, 020–022—SCF Boston, MA 020
018, 019—SCF Middlesex-Essex, MA 018
027–029—SCF Providence, RI 028
030–034—SCF Manchester, NH 030
060–061—SCF Hartford, CT 060
063–066—SCF New Haven, CT 064
070–073—SCF Newark, NJ 070
074, 075, 078—SCF Paterson, NJ 074
080–084—SCF So. Jersey, NJ 080
085–087—SCF Trenton, NJ 085
088, 089—SCF New Brunswick, NJ 088
100–102—SCF New York, NY 100
105–108—SCF Westchester, NY 105
117, 118—SCF Hicksville, NY 117
120–123—SCF Albany, NY 120
130–132—SCF Syracuse, NY 130
140–143—SCF Buffalo, NY 140
144–146—SCF Rochester, NY 144
150–152—SCF Pittsburgh, PA 150
170–172, 178—SCF Harrisburg, PA 170
180, 181, 183—SCF Lehigh Valley, PA 180
189, 193, 194—SCF Southeastern, PA 189
190, 191—SCF Philadelphia, PA 190
197–199—SCF Wilmington, DE 197
200, 202–205—SCF Washington, DC 200
206–209—SCF Prince Georges, MD 207
210–212, 214, 219—SCF Baltimore, MD 210
220–223—SCF No. Virginia, VA 220
224, 225, 230–232, 238—SCF Richmond, VA 230
233–237—SCF Hampton Roads, VA 233
250–253—SCF Charleston, WV 250
270–274—SCF Greensboro, NC 270
275–277—SCF Raleigh, NC 275
280–282—SCF Charlotte, NC 280
290–292—SCF Columbia, SC 290
297—SCF Charlotte, NC 280
300–303—SCF Atlanta, GA 330
320, 322—SCF Jacksonville, FL 320
327–329—SCF Orlando, FL 327
330–332—SCF Miami, FL 330
335–337, 342—SCF Tampa, FL 335
350–353, 355—SCF Birminghan, Al 350
360, 361—SCF Montgomery, AL 360
370–372—SCF Nashville, TN 370
380, 381, 386—SCF Memphis, TN 380
390–392—SCF Jackson, MS 390
400–402—SCF Louisville, KY 400
410—SCF Cincinnati OH 450
430–433—SCF Columbus, OH 430
434–436—SCF Toledo, OH 434
440, 441—SCF Cleveland, OH 440
442, 443—SCF Akron, OH 442
450–452—SCF Cincinnati, OH 450
453–455—SCF Dayton, OH 453
460–462—SCF Indianapolis, IN 460
470—SCF Cincinnati, OH 450
471—SCF Louisville, KY 400
480, 483—SCF Royal Oak, MI 480
481, 482—SCF Detroit, MI 481
488, 489—SCF Lansing, MI 488
490, 491—SCF Kalamazoo, MI 490
493–495—SCF Grand Rapids, MI 493
500–503—SCF Des Moines, IA 500
515, 516—SCF Omaha, NE 680
535–538—SCF Madison, WI 535
540, 550, 551—SCF Saint Paul, MN 550
553, 554—SCF Minneapolis, MN 553
600–603—SCF No. Suburban, IL 600
604, 605—SCF So. Suburban, IL 604
620, 622—SCF St. Louis, MO 630
625–627—SCF Springfield, IL 625
630, 631, 633—SCF St Louis, MO 630

640, 641, 660–662—SCF Kansas City MO 640
670–672—SCF Wichita, KS 670
680, 681—SCF Omaha, NE 680
700, 701—SCF New Orleans, LA 700
707, 708—SCF Baton Rouge, LA 707
720–722—SCF Little Rock, AR 720
723—SCF Memphis, TN 380
730, 731—SCF Oklahoma City, OK 730
740, 741, 743—SCF Tulsa, OK 740
750–753—SCF Dallas, TX 752
760, 761, 764—SCF Fort Worth, TX 760
770–772, 774, 775—SCF Houston, TX 770
780–782, 788—SCF San Antonio, TX 780
786, 787, 789—SCF Austin, TX 786
800–804—SCF Denver, CO 800
835, 838—SCF Spokane, WA 990
840, 841 843, 844—SCF Salt Lake City, UT 840
850, 852, 853, 855—SCF Phoenix, AX 852
856, 857—SCF Tucson, AX 856
870–872, 875—SCF Albuquerque, NM 870
902–905—SCF Inglewood, CA 902
906–908—SCF Long Beach, CA 907
910–912—SCF Pasadena, CA 910
913–916—SCF Van Nuys, CA 913
917, 918—SCF Alhambra, CA 917
920, 921—SCF San Diego, CA 920
923–925—SCF San Bernardino, CA 923
926–928—SCF Santa Ana, CA 926
936, 937—SCF Fresno, CA 936
940, 941, 943, 944 —SCF San Francisco, CA 940
945–948—SCF Oakland, CA 945
950, 951—SCF San Jose, CA 950
952, 953—SCF Stockton, CA 952
956–958—SCF Sacramento, CA 956
967–969—SCF Honolulu, HI 967
970–972—SCF Portland, OR 970
980, 981—SCF Seattle, WA 980
983, 984 —SCF Tacoma, WA 983
986—SCF Portland, OR 970
990–992—SCF Spokane, WA 990

Exhibit 122.63o—Area Distribution Center (ADC) Labeling List for Optional Combined Zip+4 and Presorted First-Class Mail

ZIP Codes Authorized for ADC Tray Make-Up.

3-Digit Zip Code Prefix and Label for ADC Tray

017–022—DIS Boston, MA 020
060, 061, 063–066—DIS Hartford, CT 060
070–075, 078, 088, 089—DIS Newark, NY 070
080–087—DIS So. Jersey, NJ 080
100–102, 104—DIS New York, NY 100
112–115, 117, 118—DIS JF Kennedy, NY 003
140–146—DIS Buffalo, NY 140
180, 181, 183, 189, 190, 191, 193, 194—DIS Philadelphia, PA 190
206–212, 214, 219—DIS Baltimore, MD 210
220–225—DIS No. Virginia, VA 220
230–238—DIS Richmond, VA 230
270–277—DIS Greensboro, NC 270
290–292, 297—DIS Columbia, SC 290
327–329, 334—DIS Orlando, FL 327
330–333—DIS Miami, FL 330
430–436—DIS Columbus, OH 430
440–443—DIS Cleveland, OH 440
450–455, 470—DIS Cincinnati, OH 450
480–483, 488, 489—DIS Detroit, MI 481
490, 491, 493–495—DIS Grand Rapids, MI 493
530–538—DIS Milwaukee, WI 530
620, 622, 625–627, 630, 631, 633—DIS St. Louis, MO 630
700, 701, 707, 708—DIS New Orleans, LA 700
780–782, 786–789—DIS San Antonio, TX 780
850, 852, 853, 855–857—DIS Phoenix, AZ 852
902–908, 910–918—DIS LAX–A, CA 900
920, 921, 923–928—DIS LAX–B, CA 901
936, 937, 950–953, 956–958—DIS San Francisco, CA 942
940, 941, 943–948—DIS San Francisco, CA 940
980, 981, 983, 984—DIS Seattle, WA 980

3. In 365 delete sections 365.35 and 365.36, renumber sections 365.37 and 365.38 as 365.35 and 365.36, respectively, and add new sections 365.4 and 365.5 as follows:

365 Combined Presort Mailings

* * * * *

365.4 Postage Payment

.41 General

Mailings under this section at the time of acceptance must be accompanied by documentation supporting mailing statements which are required by 382.4. The types of documents required to support mailing statements are listed in 365.42 and 365.43 below. Documentation requirements differ when postage is affixed to each piece in the mailing and when the ZIP+4 rate pieces are physically separated from other pieces in the mailing.

.42 Correct Postage Affixed to Each Piece

For the Presorted portion of the mailing, the mailer may affix the applicable ZIP+4 postage to each piece that bears a ZIP+4 code, and affix the applicable Presort First-Class postage rate to each piece that bears a 5-digit ZIP Code. For the residual portion, the mailer may affix the applicable ZIP+4 nonpresort rate to each piece that bears a ZIP+4 code and affix the applicable full First-Class rate to each piece that bears a 5-digit ZIP Code without submitting any additional documentation other than the mailing statement.

.43 ZIP+4 Rate Affixed to All Pieces or Postage Paid by Permit Imprint

.431 Conditions

The mailer may use a permit imprint or affix the ZIP+4 rate to all pieces under the following conditions:

a. If the ZIP+4 coded pieces are physically separated from all 5-digit ZIP coded pieces, no additional documentation other than the mailing statement is required. However, the residual portion of the mailing (see 365.12) must be trayed separately from the Presorted portion, and each rate category in the residual portion must be divided into groups of 100 pieces for postage verification, or

b. If the ZIP+4 coded pieces are not physically separated from all 5-digit ZIP coded pieces, a listing must be presented at the time of mailing showing by 5-digit and 3-digit ZIP Code separation the number of pieces which qualify for the Presort First-Class rate and the number of pieces which qualify for the Presort ZIP+4 rate. A summary must also be provided showing the number of pieces which qualify for each rate category, the amount of postage due for each rate category and the total postage due for the mailing. The difference between the ZIP+4 Presort postage affixed to all pieces in the mailing bearing a 5-digit ZIP Code and the Presort First-Class postage must be paid at the time of mailing. In addition, a print-out must be presented for the residual portion if the ZIP+4 coded pieces are not physically separated from the other pieces and the mailer wishes to pay the ZIP+4 (nonpresort) rate for the ZIP+4 coded pieces. If the mailer is unable to physically separate the ZIP+4 coded pieces or is unable to physically separate the ZIP+4 coded pieces or is unable to prepare a print-out for the residual portion, he must pay the full First-Class rate for each piece in the residual portion, or

c. If the mailer is unable to meet the requirements of 365.42, 365.431a or 365.431b, a summary listing is required for each mailing list showing the number of pieces bearing a ZIP+4 code and the number bearing a 5-digit ZIP Code, provided the mailer has received written authorization in accordance with 365.434–365.436 from the General Manager, Accounting and Revenue Protection Division of the region where mailings will be submitted.

.432 Applications

The mailer's request must be submitted to the postmaster of the office of mailing, and it must include:

a. Mailer's name, address and telephone number.

b. Name of post office where mailings will be presented.

c. Frequency of mailing.

d. Estimated volume per mailing.

e. An explanation of the reason the mailer cannot comply with 365.42, 365.431a and 365.431b.

f. An explanation of the procedures used to develop summary listings.

g. Sample copies of documents such as computer print-outs and records of postage meter readings that can be reviewed to substantiate the mailer's claim.

.433 Recommendation

Before recommending approval or disapproval, the postmaster or his designated representative will:

a. Make an onsite visit to review the mailer's method for determining the number of pieces in each mailing list

that bear a ZIP+4 code and the number that bear only a 5-digit ZIP Code.

b. Compare the documents listed in 365.43c with the mailing list or a portion of a mailing to determine whether the documents are reliable.

c. List the types of documents that were reviewed onsite and will attach sample documents to his recommendation.

.434 Approval

The mailer's application and the postmaster's recommendation and supporting documentation will in turn be forwarded to the management sectional center (MSC) manager of mail classification who will review the file, request additional documentation and/or make an onsite visit, if necessary, before recommending approval or disapproval. The file in turn will be forwarded to the General Manager, Accounting and Revenue Protection Division who will approve the application if he determines that the summary listing will accurately reflect the composition of the mailing.

If necessary, the general manager may request further evidence of documentation. When the General Manager, Accounting and Revenue Protection Division, is satisfied that the documentation will accurately show the number of ZIP+4 coded pieces and 5-digit coded pieces, he will authorize the mailer to prepare a summary listing for each mailing. The authorization will be sent directly to the mailer and copies will be sent to the MSC Manager, Mail Classification and the postmaster of the office of mailing, as applicable. The authorization will remain valid for a period of 90 days.

.435 Quarterly Inspections

The Postmaster or his designated representative will visit the mailer's premises on a quarterly basis to determine whether the mailer is following the approved procedures for determining percent of ZIP+4 mail and will submit a report to the region through the MSC. If the postmaster is following the approved procedures, the authorization will be renewed for a period of 90 days.

.436 Additional Applications

a. The mailer must submit another application in accordance with the requirements in 365.432 when his method for determining the ratio of ZIP+4 coded pieces changes.

b. If the mailer will enter mailings in more than one MSC or region, he must submit his request along with supporting documentation and a copy of the authorization from the General Manager, Accounting and Revenue Protection Division (in accordance with the requirements in 365.432) to the postmaster who will submit it through channels to the General Manager, Accounting and Revenue Protection Division of the region where mailings will be presented. Upon receipt of the authorization, the mailer may mail under the provisions of 365. The postmaster or his designated representative will visit the mailer's premises on a quarterly basis to determine whether the mailer is following the approved procedures for determining percent of ZIP+4 mail and will submit a report to the region through the MSC.

365.5 Mailing Statements

The mailer must submit a mailing statement for each mailing. When pieces for a mailing list or mailing cycle as defined by the mailer are mailed over a period of more than one day, each day the mailer must indicate on each mailing statement submitted under this procedure the mailing cycle or mailing list to which the pieces belong, and the final mailing statement for the mailing list or mailing cycle must accurately account for the full list or cycle. Under this procedure, a mailing statement may not be submitted for more than one mailing cycle or one mailing list.

4 Add a new 366 to read as follows:

366 Preparation Requirements for Optional Combined ZIP+4 Presort and Presort First-Class Mailings (Destinating at Automated Sites)

366.1 Combined Presort Mailings

.11 Requirements

In all instances, a combined mailing prepared in accordance with the requirements of 366 must meet all of the following criteria:

a. Minimum Pieces. Contain at least 500 pieces which bear a correct ZIP+4 code.

b. ZIP+4 Code. At least 85 percent of the pieces in the mailing must bear a ZIP+4 code.

c. Other Requirements. The mailing must meet the requirements of 324.3, 324.4, 324.5, 324.61, 365.33 and 365.34.

d. 3-Digit separations. Only pieces which are part of a group of at least 50 pieces for a 3-digit ZIP Code prefix listed in Exhibit 122.63m can qualify for mailing at Presort rates under the provisions of 366. Mail for each 3-digit destination within a tray must be physically separated through the use of visible index tabs or separator cards.

e. Destination Requirement. Only pieces destined for 3-digit ZIP Code prefixes listed in Exhibit 122.63m may be part of the mailing.

f. Traying. Only 3-digit, SCF and ADC trays are permitted for pieces which qualify for the Presort rate. The list of 3-digit ZIP Code prefixes for which combined Presort mailings may be prepared are shown in Exhibits 122.63m, 122.63n and 122.63o.

.12 Residual Pieces. Less than 50 pieces for a 3-digit ZIP Code prefix are residual and do not qualify for the Presort rate. Residual pieces must be separately trayed from the Presorted portion of the mailing and must be prepared in accordance with the requirements in 367.52. Instead of including the nonqualifying pieces as part of an optional combined ZIP+4 Presort and Presort First-Class Mailing, the pieces may be presented as a separate mailing under the provisions of 365.

366.2 3-Digit Tray Preparation and Labeling

When there are 500 pieces for the same 3-digit destination (or at least ¾ of a tray) a 3-digit tray must be prepared. Only those authorized 3-digit ZIP Code prefixes in Exhibit 122.63m can be mailed under the provisions of 366. The trays must be labeled in the following manner:

Line 1: City, State, 3-Digit Destination
Line 2: Class, Contents
Line 3: Mailer, Mailer Location

Sample:

ORLANDO FL 329
FCM ZIP+4 PRESORT
FR Q MAILERS BALTO MD

Note.—When a tray contains mail for only one 3-digit ZIP Code prefix, the description SCF must not be printed on the City, State, 3-Digit Destination line.

366.3 SCF Tray Preparation and Labeling

When, after all 3-digit trays are prepared, there are 50 or more pieces for more than one 3-digit ZIP Code prefix and 500 pieces (or at least ¾ of a full tray) for an SCF, an SCF tray must be prepared. Mail for each 3-digit destination within a tray must be physically separated by visible index tabs or separator cards. Only those authorized 3-digit ZIP Code prefixes in Exhibit 122.63m can be mailed under the provisions of 366. SCF trays must be labeled in accordance with the requirements in Exhibit 122.63n, in the following manner:

Line 1: SCF, State, SCF Code
Line 2: Class, Contents
Line 3: Mailer, Mailer Location

Sample:

SCF ORLANDO FL 327
FCM ZIP+4 PRESORT

FR Q MAILERS BALTO MD

366.4 ADC Tray Preparation and Labeling

Mail left over after preparing all 3-digit and SCF trays must be placed in the appropriate Area Distribution Center (ADC) tray. Mail for each 3-digit destination within a tray must be physically separated by visible index tabs or separator cards. Only those authorized 3-digit ZIP Code prefixes in Exhibit 122.63m can be mailed under the provisions of 366. ADC trays must be labeled in accordance with the requirements in Exhibit 122.63o, in the following manner:

Line 1: Area Distribution Center, Code
Line 2: Class, Contents
Line 3: Mailer, Mailer Location

Sample:

DIS ORLANDO FL 327
FCM ZIP+4 PRESORT
FR Q MAILERS BALTO MD

366.5 Postage Payment

Mailings under this section at the time of acceptance must be accompanied by documentation supporting mailing statements which are required by 382.4. The types of documents required to support mailing statements for mailings presented under the provisions of 366 are listed in 365.4. Required documentation depends on whether postage is affixed to each piece in the mailing and whether the ZIP+4 rate pieces are physically separated from other pieces in the mailing.

366.6 Mailing Statements

The mailer must submit a mailing statement for each mailing. When pieces for a mailing list or mailing cycle as defined by the mailer are mailed over a period of more than one day, each day the mailer must indicate on each mailing statement submitted under this procedure the mailing cycle or mailing list to which the pieces belong, and the final mailing statement for the mailing list or mailing cycle must accurately account for the full list or cycle. Under this procedure, a mailing statement may not be submitted for more than one mailing cycle or one mailing list.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published when the final rule is adopted.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 86-1467 Filed 1-22-86; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 176, 177, 178, and 180

[Docket Nos. HM-183, 183A; Notice No. 85-4]

Requirements for Cargo Tanks; Extension of Comment Period

AGENCY: Office of Hazardous Materials Transportation, Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of Proposed Rulemaking; Extension of Comment Period.

SUMMARY: On September 17, 1985, RSPA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (50 FR 37766). The NPRM proposed to amend the Hazardous Materials Regulations (49 CFR Parts 171–179) pertaining to the manufacture of cargo tanks and the operation, maintenance, repair and requalification of all specification cargo tanks. A document correcting typographical errors, omissions, minor discrepancies and clarifying certain requirements in the NPRM was published on December 5, 1985 (50 FR 49866).

Several petitioners—including the American Petroleum Institute, the Compressed Gas Association, Inc., the National Tank Truck Carriers, Inc., the Truck Trailer Manufacturers Association and the Petroleum Marketers Association of America—have requested additional time to evaluate the proposals contained in the NPRM. RSPA agrees that some additional time should be allowed and is extending the closing date for comments on Notice No. 85-4.

DATE: By this notice, RSPA extends the comment period from February 11, 1986, to May 22, 1986.

FOR FURTHER INFORMATION CONTACT: Hattie Mitchell (202) 426-2075, Office of Hazardous Materials Transportation, U.S. Department of Transportation, Washington, D.C. 20590.

Issued in Washington, D.C. on January 16, 1986 under the authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 86-1384 Filed 1-22-86; 8:45 am]

BILLING CODE 4910-60-M

49 CFR Part 192

[Docket No. PS-76; Notice 2]

Transportation of Natural and Other Gas by Pipeline; Monitoring of External Corrosion Control

AGENCY: Research and Special Programs Administration (RSPA) DOT.

ACTION: Withdrawal of Advance Notice of Proposed Rulemaking (ANPRM).

SUMMARY: This Notice withdraws a proposal to provide alternate methods of compliance with the requirements for monitoring cathodic protection systems where pipelines are located beneath paving or in areas of stray currents. Comments to the ANPRM indicated that, with few exceptions, the required monitoring of cathodic protection of pipelines located beneath paving or in stray current areas can be done effectively, although with difficulty.

FOR FURTHER INFORMATION CONTACT: Paul J. Cory, (202) 426-2082, regarding the content of this notice, or the Dockets Branch, (202) 426-3148, regarding copies of this notice or other information in the docket.

SUPPLEMENTARY INFORMATION: RSPA has reviewed the requirements of § 192.465(a) which provide that each pipeline under cathodic protection must be tested at least once each calendar year, but with intervals not exceeding 15 months, to determine whether the cathodic protection meets the criteria of § 192-463. The main focus of the review was the technical feasibility of making the necessary electrical tests in areas where cathodically protected pipelines are located beneath continuous paving.

The review considered a 1976 petition from the American society of Mechanical Engineers (ASME) Gas Piping Standards Committee (Pet. 76-5) to permit the use of annual leakage surveys and corrosion and leak history studies to monitor the effectiveness of cathodic protection.

The ASME contended that where cathodically protected pipelines are beneath paving, the reference electrode often cannot be placed in intimate electrical contact with the soil, and readings taken with contact on the paving surface are often found to be invalid.

The review also considered that in 1978 the Technical Pipeline Safety Standards Committee (TPSSC) had recommended the use of annual leakage surveys and corrosion and leak history studies to verify and monitor the effectiveness of cathodic protection where electrical methods are

impractical or ineffectual. Like ASME, the TPSSC intended that these methods be used in business and commercial areas where roadway and sidewalk paving exists between on each side of the street, and where stray current effects are predominant.

Neither the ASME petition nor the TPSSC recommendation was adopted because the objective of the monitoring required by § 192.465(a) is to find and correct faulty cathodic protection in time to prevent corrosion leaks. Use of the proposed alternatives would be fruitful only after cathodic protection has become so ineffective that leaks are occurring. In addition, the agency was not convinced that electrical testing was impractical or ineffective in the areas in which the alternative would apply.

As part of the review, the agency studies the feasibility of applying electrical testing techniques necessary to comply with § 192.465(a) in paved areas. This study, done by the Harco Corporation under Contract DTRS–5680–C–00004, was completed in January 1982. It investigated electrical measurements made on cathodically protected steel pipelines located in commercial areas where roadway and sidewalk paving exist between buildings on each side of the street and other underground metallic structures are buried, and in areas where stray current effects are predominant.

Harco's testing of cathodic protection on pipelines under paving verified the ASME contention that pipe-to-soil voltage readings were often not obtainable using surface contact, and when readings were obtained, they were often of little or no value in determining the level of cathodic protection being provided. However, Harco found that reliable readings could be obtained at cracks in the pavement, at adjacent spots of exposed soil, or by boring holes through the pavement to permit contact with the soil.

The review concluded that electrical tests made on a solid paved surface over a pipeline cannot be relied upon to comply with § 192.465(a), but that where contact with the soil is provided the electrical tests can be conducted satisfactorily. Also, the review determined that stray current problems could be circumvented by planning the time of tests.

On March 10, 1983, RSPA published an advance notice of proposed rulemaking (ANPRM) [Docket No. PS–76; Notice 1; 48 FR 10092] primarily to learn the costs of compliance with § 192.465(a) but also to examine alternative ways to monitor cathodic protection in paved areas. Response to this ANPRM supports the position that electrical tests under § 191.465(a) may be difficult in paved areas where access to the soil is not readily available. However, many comments indicated that with few exceptions the tests can be made satisfactorily. Comments to the ANPRM also indicated that there was no alternative to conducting electrical tests under § 192.465(a) other than using leak surveys or leak history which provides an indication only after complete failure of the cathodic protection system RSPA does not consider that the existence of paving over a pipeline makes the requirements of § 192.465(a) inappropriate. The purpose of monitoring cathodic protection is to prevent leaks. Thus the use of leak surveys is not a viable alternative to electrical tests on pipe where cathodic protection is required.

In the ANPRM one of the questions asked the costs of conducting the electrical tests required by § 192.465(a) under various conditions. Annual costs for the required tests under normal conditions involving little or no paving were reported between $9.00 and $600.00 per mile, with the average of the 37 comments received being $127.92 per mile. Costs in paved areas where drilling is used varied between $21.00 and $1,220.00 per mile with the average of 17 comments being $373.29 per mile. Costs in stray current areas requiring special measures varied between $150.00 and $16,600.00 per mile. The $16,600.00 figure was more than 3 times the next lower figure at $5,414.00 per mile and was considered as abnormally high. The average of the remaining 15 comments concerning costs of conducting the tests required under § 192.465(a) in areas of stray currents was $1,440.56 per mile. RSPA does not consider the average costs indicated above to be unreasonable in comparison to the potential harm that can result from corrosion leaks in the highly populated areas where paving or stray currents exist. However, it may be possible to reduce this cost impact somewhat by changing the frequency of testing. RSPA is examining this issue in a separate review project.

In the process of reconsidering the monitoring under § 192.465(a), other questions were raised concerning the practicality of electrical surveys to detect corrosion on cathodically unprotected pipe (§ 192.465(e)) and the definition of active corrosion. These related issues are also being addresed by RSPA in a separate review project.

At a meeting of the TPSSC, December 10, 1985, a proposal to withdraw the ANPRM was informally discussed. No objection was made to the proposed withdrawal.

In view of the discussion above, RSPA hereby withdraws from further consideration the proposal stated in the ANPRM concerning the use of leak surveys as a general alternative to electrical tests of cathodic protection systems. In cases where technical problems preclude making the required tests or costs can be shown to exceed benefits operators may consider seeking a waiver of the requirement.

Issued in Washington, D.C. on January 16, 1986.

Robet L. Paullin,

Director, Office of Pipeline Safety.

[FR Doc. 86–1383 Filed 1–22–86; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Game Bird Hunting; Draft Supplemental Environmental Impact Statement on the Use of Lead Shot for Hunting Migratory Birds in the United States, and Proposed Rule for 1986–87 Nontoxic Shot Zones for Migratory Game Bird Hunting

AGENCY: Fish an Wildlife Service, Interior.

ACTION: Notice of extension of comment periods.

SUMMARY: The U.S. Fish and Wildlife Service (FWS) gave notice in the December 19, 1985, **Federal Register** (at 50 FR 51752) of the availability of a draft Supplemental Environmental Impact Statement on the use of lead shot for migratory bird hunting. This Draft Supplement of a 1976 Final Environmental Statement on the use of steel shot for hunting waterfowl in the United States incorporates data from that document and summarizes information gathered since 1976 on lead poisoning of endangered and nonendangered migratory birds due to lead shot ingestion.

When eaten by waterfowl and other migratory birds, spent lead shotshell pellets may have a toxic effect. To alleviate this problem, the FWS published a proposed rule in the January 6, 1986, **Federal Register** (at 51 FR 409) describing areas in which lead shot would be prohibited for waterfowl and coot hunting in the 1986–87 hunting season.

This notice advises the public that comment periods for the *Draft Supplemental Environmental Impact Statement on the Use of Lead Shot for*

Hunting Migratory Birds in the United States and the proposed rule *Zones in Which Lead Shot Will Be Prohibited for Waterfowl and Coot Hunting in the 1986–87 Hunting Season* are extended to February 19, 1986. Extending the comment periods will afford the public more time to review the documents and provide the FWS with comments and suggestions.

DATES: Comments on the Draft Supplemental Environmental Impact Statement and the Proposed rule will be accepted until February 19, 1986.

ADDRESSES: Submit comments to Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building Room 536, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Matomic Building Room 536, Washington, DC 20240 (202/254–3207).

Dated: January 17, 1986.

Ronald E. Lambertson,

Acting Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 86–1429 Filed 1–22–86; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 640

Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene Spiny Lobster Public Hearings to review Amendment 1 to the Spiny Lobster Fishery Management Plan of the Gulf of Mexico and South Atlantic Fishery Management Councils.

DATES: Written comments will be accepted through March 10, 1986. The hearings will convene at 7:00 p.m., and will adjourn at approximately 10:00 p.m., on February 10, 11, 12, 13, 18, and 19, 1986.

ADDRESSES: Written comments should be sent to Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Florida 33609. See **"SUPPLEMENTARY INFORMATION"** for locations of the hearings.

FOR FURTHER INFORMATION CONTACT: Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 813–228–2815.

SUPPLEMENTARY INFORMATION: The public hearings will be held at the following locations.

February 10, 1986—Key West High School Auditorium, 2100 Flagler Avenue, Key West, Florida

February 11, 1986—American Legion Hall (Post 154), 4115 Overseas Highway, Marathon, Florida

February 12, 1986—Great Elks of Florida Keys Hall, 92½ Mile Marker, Tavernier, Florida

February 13, 1986—Rosenstiel School of Marine and Atmospheric Sciences, 4600 Rickenbacker Causeway, Miami, Florida

February 18, 1986—City Hall Commission Room, 9 Harrison Avenue, Panama City, Florida

February 19, 1986—Hall of 50 States (adjacent to the Chamber of Commerce Tourist Center), Edward Drive, Ft. Myers, Florida

Dated: January 17, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–1421 Filed 1–22–86; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 51, No. 15
Thursday, January 23, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

January 17, 1986.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extentions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Agricultural Stabilization and Conservation Service

Supplemental Qualification Statement—Agricultural Program Specialist (GS–1145–5/7)
ASCS–650
When vacancies exist
Individual or households; 1,000 responses; 2,000 hours; not applicable under 3504(h)
Donald L. Samuels, (202) 447–7517

- Food and Nutrition Service

Food Stamp Redemption Certificate
FNS–278B and FNS–278–4
On occasion
Small businesses or organization; 23,107,128 respnses; 4,887,928 hours; not applicable under 3504(h)
Paul Jones, (703) 756–3427

Revision

- Farmers Home Administration

Borrower Acknowledgement of Notice to Take Adverse Action and Agreement for the Use of Proceeds/Release of Chattel Security and/or Farm Income
FmHA 1924–26, 1962–1
On occasion
Individuals or households; Farms; 220,000 responses; 65,400 hours; not applicable under 3504(h)
M.K. Smith, (202) 475–4016

- Farmers Home Adminstration

7 CFR 1965–A, Servicing of Real Estate Security for Farmer Program Loans and Certain Note—Only Cases
FmHA 440–2, –9, –26, 443–16, 465–1, –5, 1965–11, –13, –15
On occasion
Individuals or households; Farms; Businesses or other for-profit; Small businesses or organization; 82,150 responses; 34,433 hours; not applicable under 3504(h)
Chet Bailey, (202) 382–1648.

Donald E. Hulcher,
Acting Departmental Clearance Officer.

[FR Doc. 86–1440 Filed 1–22–86; 8:45 am]
BILLING CODE 3410–01–M

National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Public Law 92–463, 86 Stat. 770–776), the Office of Grants and Program Systems announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board.

Date: February 24–26, 1986.

Time: 8:00 a.m.–5:30 p.m., February 24–25, 1986; 8:00 a.m.–9:30 a.m., February 26, 1986.

Place: The Dupont Hotel, 1500 New Hampshire Ave., NW., Washington, DC.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: The Board will be preparing a report assessing the President's proposed FY 1987 budget for agricultural research and extension agencies.

Contact Person for Agenda and More Information: Marshall Tarkington, Executive Secretary, National Agricultural Research and Extension Users Advisory Board, Room 316–A, Administration Building, U.S. Department of Agriculture, Washington, D.C. 20250; telephone (202) 447–3684.

Done in Washington, DC, this 10th day of January 1986.

J. Patrick Jordan,
Acting Administrator, Office of Grants and Program Systems.

[FR Doc. 86–1412 Filed 1–22–86; 8:45 am]
BILLING CODE 3410–MT–M

COMMISSION ON CIVIL RIGHTS

Alabama Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Alabama Advisory Committee to the Commission will convene at 11:00 a.m. and adjourn at 1:00 p.m. on February 18, 1986, at the Birmingham Hilton, 808 S. 20th Street, Arlington Room, Birmingham, Alabama. The purpose of the meeting is to review a briefing memorandum on the community forums on election procedures and plan for the committee's next project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Rodney Max, or Bobby Doctor, Director of the Southern Regional Office at (404) 221–4391, (TDD 404/221–4391). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at lest five(5)

working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC., January 16, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86-1397 Filed 1-22-86; 8:45 am]

BILLING CODE 6335-01-M

Colorado Advisory Committee; Cancellation

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Colorado Advisory Committee to the Commission originally scheduled for February 3, 1986, convening at 1:00 p.m. and adjourning at 3:00 p.m., at the SBA, Executive Tower Building, 1405 Curtis Street, 22nd Floor, Denver, Colorado (FR Doc 86-294, Pages 659 & 660) has been cancelled.

Dated at Washington, DC, January 16, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86-1398 Filed 1-22-86; 8:45 am]

BILLING CODE 6335-01-M

Illinois Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 9:00 p.m., on February 12, 1986, at the Midland Hotel, 172 W. Adams, Chicago, Illinois. The purpose of the meeting is to conduct a public forum on government response to hate group violence.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Hugh Schwartzburg or Clark Roberts, Director of the Midwestern Regional Office at (312)353-7371, (TDD 312/886-2188). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC., January 16, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86-1400 Filed 1-22-86; 8:45 am]

BILLING CODE 6335-01-M

Illinois Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 5:00 p.m., on February 13, 1986, at the Ceremonial Courtroom, 219 S. Dearborn, Chicago, Illinois. The purpose of the meeting is to conduct a public forum on government response to hate group violence.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Hugh Schwartzburg or Clark Roberts, Director of the Midwestern Regional Office at (312)353-7371, (TDD 312/886-2188). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC., January 16, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86-1401 Filed 1-22-86; 8:45 am]

BILLING CODE 6335-01-M

Indiana Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Indiana Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 9:00 p.m., on February 20, 1986, at the Indiana Memorial Union (Indiana University), East 7th Street, Distinguished Alumni Room, Bloomington, Indiana. The purpose of the meeting is to discuss the committee's forum on affirmative action in Indianapolis Police and Fire Departments. In addition, the committee will hear reports on monitoring of housing, block grants, and education.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, James Nuechterlein or Clark Roberts, Director of the Midwestern Regional Office at (312) 353-7371, (TDD 312/886-2188). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC., January 16, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86-1399 Filed 1-22-86; 8:45 am]

BILLING CODE 6335-01-M

Massachusetts Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Massachusetts Advisory Committee to the Commission will convene at 4:00 p.m. and adjourn at 6:00 p.m., on February 6, 1986, at the U.S. Commission on Civil Rights, 55 Summer Street, 8th Floor, Boston, Massachusetts. The purpose of the meeting is to discuss plans for FY '86 projects and community forums.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Philip Perlmutter or Jacob Schlitt, Director of the New England Regional Office at (617) 233-4671, (TDD 617/223-0344). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC., January 16, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86-1396 Filed 1-22-86; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Department of the Interior; Decision on Application for Duty-Free Entry of Scientific Instrument

The decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No: 85–293. Applicant: U.S. Department of the Interior, Lakewood, CO 80225. Instrument: ICP/Mass Spectrometer. Manufacturer: VG Instruments, United Kingdom. Intended Use: See notice at 50 FR 41381.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides simultaneous qualitative and quantitative data for trace metels and major cations and abundance sensitivity of at least 10^{-5} for both high and low mass. The capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–1406 Filed 1–22–86; 8:45 am]

BILLING CODE 3510–DS–M

Los Alamos National Laboratory; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No.: 84–329. *Applicant:* Los Alamos National Laboratory, Los Alamos, NM 87545. *Instrument:* Ultra Fast Streak Framing Camera, Model IMACON 675 I/520 and Accessories. *Manufacturer:* Hadland Photonics, United Kingdom. *Intended Use:* See notice at 49 FR 42774.

Contents: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides framing capability with a frame duration of 1.0 nanosecond (ns) and an interframe time less than 2.0 ns. The Naval Research Laboratory advises in its memorandum dated December 17, 1984 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–1402 Filed 1–22–86; 8:45 am]

BILLING CODE 3510–DS–M

National Institutes of Health; Decision of Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.: 85–304. Applicant: National Institutes of Health, NIAID, Bethesda, MD 20892. Instrument: Hollow Fiber Culture Apparatus. Manufacturer: Catholic University of Nijmegen, The Netherlands. Intended use: See notice at 50 FR 41379.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign apparatus provides a constantly controlled environment for the growth of malarial parasites in culture. The capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–1408 Filed 1–22–86; 8:45 am]

BILLING CODE 3510–DS–M

Queens College, City University of New York; Decision on Application for Duty-Free Entry of Scientific Instrument

The decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.: 85–140R. Applicant: Queens College, City University of New York, Flushing, NY 11367–0904. Instrument: Teaching Flash Kinetic Spectrometer with Accessories. Original notice of this resubmitted application was published in the **Federal Register** of May 3, 1985.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign article demonstrates the principles of flash photolysis and enables the study of decay kinetics over a wavelength range of 350 to 750 nanometers. The capability is pertient to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–1407 Filed 1–22–86; 8:45 am]

BILLING CODE 3510–DS–M

University of California; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651,

80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 84–326. *Applicant: University of California, Los Angeles, CA 90024. Instrument:* Electron Paramagnetic Resonance Spectrometer System, Model ER/200D. *Manufacturer:* Bruker Analytik GmbH, West Germany. *Intended Use:* See notice at 49 FR 42774.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, was being manufactured in the United States at the time the instrument was ordered (January 13, 1984).

Reasons: The foreign instrument provides high magnetic field stability and homogeneity with a field accuracy of 1.0 gauss over the entire operating range. The National Bureau of Standards advises in its memorandum dated December 17, 1984 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use being manufactured at the time the foreign instrument was ordered.

We know of no other domestic instrument or apparatus of equivalent scientific value to the foreign instrument being manufactured at the time the foreign instrument was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–1403 Filed 1–22–86; 8:45 am]

BILLING CODE 3510-DS-M

University of California, Lawrence Livermore Nat'l Laboratory; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 85–300. Applicant: University of California, Lawrence Livermore National Laboratory, Livermore, CA 94550. Instrument: Streak Camera, Model C1587 with Accessories. Manfacturer: Hamamatsu Corporation, Japan. Intended Use: See notice at 50 FR 41379.

Comments: None received.

Decision: Approved. No domestic manufacturer was both able and willing to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the instrument was intended to be used, and have it available to the applicant without unreasonable delay in accordance with § 301.5(d)(2) of the regulations, at the time the foreign instrument was ordered (May 17, 1985).

Reasons: The foreign article provides streak speeds ranging from 20 picoseconds/mm to 50 microseconds/mm and a temporal resolution no greater than 5 picoseconds of fastest streak speed. This capability is pertinent to the applicant's intended purposes. We know of no domestic manufacturer both able and willing to provide an instrument with the required features at the time the foreign instrument was ordered.

As to the domestic availability of instruments, § 301.5(d)(2) of the regulations provides that, in determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, "the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be taken into account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case." This subsection also provides that, if "a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument."

The applicant received no response to a formal request for quotation sent to the only domestic manufacturer of comparable instruments tha we know of. It is therefore apparent that the domestic manufacturer was either not able or not willing to produce an instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument was intended to be used at the time the foreign instrument was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director.

FR Doc. 86–1409 Filed 1–22–86; 8:45 am]

BILLING CODE 3510-DS-M

University of Chicago, Operator of Argonne Nat'l Laboratory Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 85–157R. Applicant: University of Chicago, Operator of Argonne National Laboratory, Argonne, IL 60439. Instrument: Surface Analysis System, Model X Sam 800. Original notice of this resubmitted application was published in the Federal Register of May 24, 1985.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign apparatus is an attachment to an existing Molecular Beam Epitaxy apparatus, providing for the transfer of samples between each apparatus without exposure to atmosphere. The capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Statutory Import Programs Staff.

[FR Doc. 86–1410 Filed 11–22–86; 8:45 am]

BILLING CODE 3510-DS-M

University of Chicago, Operator of Argonne Nat'l Laboratory; Decision of Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related

records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 85-286. Applicant: University of Chicago, Operator of Argonne National Laboratory, Argonne, IL 60439. Instrument: Superconduction Magnet System. Manufacturer: Oxford Instruments Limited, United Kingdom. Intended Use: See notice at 50 FR 41380.

Comments: None received.

Decision: Approved. No domestic manufacturer was both able and willing to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the instrument was intended to be used, and have it available to the applicant without unreasonable delay in accordance with § 301.5(d)(2) of the regulations, at the time the foreign instrument was ordered (November 13, 1985).

Reasons: The foreign instrument provides a maximum central magnetic field at 2.2K of 13 Tesla and a sample insert temperature range from 1.5 to 300K. This capability is pertinent to the applicant's intended purposes. We know of no domestic manufacturer both able and willing to provide an instrument with the required features at the time the foreign instrument was ordered.

As to the domestic availability of instruments, § 301.5(d)(2) of the regulations provides that, in determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, "the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be taken into account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case." This subsection also provides that, if "a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this seciton the domestic manufacturer would not be considered willing to have supplied the instrument."

The applicant, received no respnse to a formal request for quotation sent to several domestic manufacturers. We know of no other manufacturer of an equivalent instrument. It is therefore apparent that no domestic manufacturer was both able and willing to produce an instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument was intended to be used at the time the foreign instrument was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-1411 Filed 11-22-86; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Financial Assistance Application Announcements; Arizona

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Indian Business Development Center (IBDC) Program to operate an IBDC for a three year period, subject to available funds and satisfactory performance. The cost of performance for the first 12 months is estimated at $300,000 for the budget period July 1, 1986 to June 30, 1987. The IBDC will operate in the State of Arizona.

The I.D. Number for this project will be 09-10-86016-01.

The funding instrument for the IBDC will be a cooperative agreement and competition is open to American Indian non-profit organizations and for profit firms (those entities which are owned or controlled by one or more American Indian Persons).

The IBDC is designed to provide management and technical assistance to eligible American Indian clients for the establishment and operation of businesses. In order to accomplish this, MBDA supports IBDC programs that can: coordinate and broker public and private sector resources on behalf of American Indian individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of American Indian business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance.

The IBDC will operate for a three year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an IBDC's satisfactory performance, the availability of funds, and Agency priorities.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94103, February 13, 1986 at 10:00 A.M.

Proposals are to be Mailed to the Following Address: Minority Business Development Agency, U.S. Department of Commerce, San Francisco Regional Office, 221 Main Street, Room 1280, San Francisco, California 94103, 415/974-9597 (415/556-6734 before January 24, 1986)

Closing Date: The closing date for applications is February 28, 1986. Applications must be postmarked by midnight February 28, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: January 15, 1986.

Xavier Mena,

Regional Director, San Francisco Regional Office.

[FR Doc. 86-1393 Filed 1-22-86; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Application Announcement; California

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Indian Business Development Center (IBDC) Program to operate an IBDC for a three year period, subject to available funds and satisfactory performance. The cost of performance for the first 12 months is estimated at $250,000 for the budget period July 1, 1986 to June 30, 1987. The IBDC will operate in the State of California.

The I.D. Number for this project will be 09–10–86017–01.

The funding instrument for the IBDC will be a cooperative agreement and competition is open to American Indian non-profit organizations and for profit firms (those entities which are owned or controlled by one or more American Indian Persons).

The IBDC is designed to provide management and technical assistance to eligible American Indian clients for the establishment and operation of businesses. In order to accomplish this, MBDA supports IBDC programs that can: coordinate and broker public and private sector resources on behalf of American Indian individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of American Indian business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance.

The IBDC will operate for a three year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an IBDC's satisfactory performance, the availability of funds, and Agency priorities.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94103. February 13, 1986 at 10:00 A.M.

Proposals are to be Mailed to the Following Address: Minority Business Development Agency, U.S. Department of Commerce, San Francisco Regional Office, 221 Main Street, Room 1280, San Francisco, California 94103, 415/974–9597 (415/556–6734 before January 24, 1986).

Closing date: The closing date for applications is February 28, 1986. Applications must be postmarked by midnight February 28, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Xavier Mena,

Regional Director, San Francisco Regional Office.

Dated: January 15, 1986.

[FR Doc. 86–1394 Filed 1–22–86; 8:45 am]

BILLING CODE 3510–21–M

Financial Assistant Application Announcements; Washington

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3 year period, subject to available funds. The cost of performance for the first 12 months is estimated at $270,588 for the project performance period of July 1, 1986 to June 30, 1987. The MBDC will operate in the Seattle Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $230,000 in Federal funds and a minimum of $40,588 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The I.D. Number for this project will be 10–10–86019–01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as the MBDC's satisfactory performance, the availability of funds, and Agency priorities.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94103. February 13, 1986 at 10:00 A.M.

Proposals are to be Mailed to the Following Address: Minority Business Development Agency, U.S. Department of Commerce, San Francisco Regional Office, 221 Main Street, Room 1280, San Francisco, California 94103, 415/974–9597 (415/556–6734 before January 24, 1986).

Closing Date: The closing date for applications is February 28, 1986. Applications must be postmarked by midnight February 28, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at this above address.

(11.800 Minority Business Development (Catalog of Federal Domestic Assistance))

Dated: January 15, 1986.

Xavier Mena,

Regional Director, San Francisco Regional Office.

[FR Doc. 86–1395 Filed 1–22–86; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit; Deborah A. Glockner-Ferrari and Mark J. Ferrari

On December 10, 1985, notice was published in the **Federal Register**. (50 FR 50336) that an application had been filed by Deborah A. Glockner-Ferrari and Mark J. Ferrari, 1728 San Luis Road, Walnut Creek, California 94296 for Scientific Purposes Permit to study

humpback whales (*Megaptera novaeangliae* in the waters of Hawaii, Alaska and California.

Notice is hereby given that on January 14, 1986 as authorized by the provisions of the Marine Mannal Protection Act (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 is based on a finding that such Permit; (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220–222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC;

Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802;

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: Janaury 16, 1986.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 86–1413 Filed 1–22–86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of General Permit

A general permit was issued on January 13, 1986, to the Japan Deep Sea Trawlers Association, Tokyo, Japan, to take marine mammals incidental to commercial fishing operations under Category 1: Towed or Dragged Gear pursuant to 50 CFR 216.24.

The general permit allows the taking of not more than 15 cetaceans and 115 pinnipeds annually by certificate holders operating under this permit within the U.S. fishery conservation zone of the North Atlantic and North Pacific Oceans. The permit is valid until December 31, 1986.

This general permit is available for public review in the Office of the Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC.

Dated: January 14, 1986.

J.W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 86–1414 Filed 1–22–86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of General Permit

A general permit was issued on January 15, 1986, to the Hokuten Trawlers Association, Tokyo, Japan, to take marine mammals incidential to commercial fishing operations under Category 1: Towed or Dragged Gear purusant to 50 CFR 216.24.

The general permit allows the taking of not more than 30 pinnipeds annually by certificate holders operating under this permit within the U.S. fishery conservation zone of the North Pacific Ocean. The permit is valid until December 31, 1986.

This general permit is available for public review in the Office of the Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, DC.

Dated: January 16, 1986.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 85–1415 Filed 1–22–85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of General Permit

A general permit was issued on January 13, 1986, to the North Pacific Longline Association, Tokyo, Japan, to take marine mammals incidental to commercial fishing operations under Category 5: Other Gear pursuant to 50 CFR 216.24.

The general permit allows the taking by harassment of cetaceans and pinnipeds by certificate holders operating under this permit within the U.S. fishery conservation zone of the North Pacific Ocean. The permit is valid until December 31, 1986.

This general permit is available for public review in the Office of the Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW. Washington, DC.

Dated: January 14, 1986.

J.W. Angelovic,

Deputy Assistant Administrator for Science and Technology: National Marine Fisheries Service.

[FR Doc. 86–1416 Filed 1–22–86; 8:45 am]

BILLING CODE 3510-22-M

Coastal Zone Management; Federal Consistency Appeal by the County of San Mateo, California, From an Objection of the California Coastal Commission

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal.

On January 6, 1986, the County of San Mateo, California (County) filed a notice of appeal and supporting information to the Secretary of Commerce under section 307(c)(3)(A) of the Coastal Zone Management Act, 16 U.S.C. 1456(c)(3)(A) (CZMA), and 15 CFR 930 Subpart H. The appeal is taken from an objection of the California Coastal Commission (Commission) to the County's certification that its cable fence erected in Princeton-by-the-Sea would be consistent with the Federally-approved California Coastal Management Program. The certification was filed with a permit agreement with the United States Air Force; the agreement allowed the County to build the fence along the Air Force's right of way to stop vehicles from entering a marsh area adjacent to a beach bordering Princeton Harbor.

The Commission objected to the cable fence because access to the Princeton Harbor beach would be blocked. The County argues that its project should be allowed to remain because the cable fence is consistent with the objectives of the CZMA, as set forth at 15 CFR 930.121.

Within 30 days of the publication date of this notice, interested persons may submit comments on the issues raised in this appeal to Daniel W. McGovern, General Counsel, National Oceanic and Atmospheric Administration, Room 5814, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Copies of comments should also be sent to:

James P. Fox, District Attorney, County

of San Mateo, County Government Center, Redwood City, California 94063

Peter Douglas, Executive Director, California Coastal Commission, 631 Howard Street, San Francisco, California 94105

FOR FURTHER INFORMATION CONTACT: L. Pittman, Attorney-Advisor, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235; 202/254–7512.

Dated: January 14, 1986.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration)

Daniel W. McGovern,

General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 86–1373 Filed 1–22–86; 8:45 am]

BILLING CODE 3510–08–M

Oceans and Atmosphere National Advisory Commerce; Future Meeting Dates

January 10, 1986.

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1 (1982), as amended, notice is hereby given that the National Advisory Committee on Oceans and Atmosphere (NACOA) will hold meetings on the days listed below in calendar year 1986. All the meetings will be held in Washington, D.C. Exact times and locations will be announced at a later date.

The Committee, consisting of 18 non-Federal members appointed by the President from academia, business and industry, public interest organizations, and State and local governments was established by Congress by Public Law 95–63 on July 5, 1977. Its duties are to (1) undertake a continuing review, on a selective basis, of national ocean policy, coastal zone management, and the status of the marine and atmospheric science and service programs of the United States; (2) advise the Secretary of Commerce with respect to the carrying out of the programs administered by the National Oceanic and Atmospheric Administration; and (3) submit an annual report to the President and to the Congress setting forth an assessment, on a selective basis, of the status of the Nation's marine and atmospheric activities, and submit such other reports as may from time to time be requested by the President or Congress.

The tentative meeting dates are as follows:

January 6–7—Monday and Tuesday
March 17–18—Monday and Tuesday
June 2–3—Monday and Tuesday
August 4–5—Monday and Tuesday
September 25–26—Thursday and Friday
December 8–9—Monday and Tuesday

The public is welcome at the sessions and will be admitted to the extent that seating is available. Persons wishing to make formal statements should notify the Chairman in advance of the meeting. The Chairman retains the prerogative to place limits on the duration of oral statements and discussions. Written statements may be submitted before or after each session.

Additional information concerning these meetings may be obtained through the Committee's Acting Executive Director, Amor L. Lane, whose mailing address is: National Advisory Committee on Oceans and Atmosphere, 3300 Whitehaven Street, NW., Page Building #1, Suite 438, Washington, DC 20235. The telephone number is 202/653–7818.

Dated: January 10, 1986.

Amor L. Lane,

Acting Executive Director.

[FR Doc. 86–1378 Filed 1–22–86; 8:45 am]

BILLING CODE 3510–12–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing a Change in Quota Category Requirement for Coats and Jackets Without Full Frontal Openings From Categories 359 and 659 to Categories 334, 335, 534 and 645; Correction

January 17, 1986.

On December 31, 1985 a notice was published in the **Federal Register** (50 FR 53371) announcing a waiver procedure for shipments of coats and jackets without full frontal openings in certain specified T.S.U.S.A numbers imported into the United States on or before February 29, 1986.

The following information should have been included in the list of items needed to grant such a waiver: "Quantity in pounds and dozens."

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–1405 Filed 1–22–86; 8:45 am]

BILLING CODE 3510–DR–M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Approval of Survey of Manufacturers and Importers of Chain Saws and Saw Chains

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval of a survey of all known manufacturers and importers of chain saws and saw chains to determine the extent to which their products conform with the anti-kickback provisions of American National Standard ANSI B175.1, "Safety Requirements for Gasoline Powered Chain Saws."

Chain saw "kickback" is the sudden upward or backward movement of a chain saw toward the operator which can be caused by interference with the movement of the chain. This kickback can propel the moving saw chain into contact with the person using the chain saw, often resulting in serious injuries. The Commission estimates that chain saw kickback causes approximately 22,000 injuries per year.

The Commission has been working for a number of years toward reducing the risk of chain saw kickback. On May 5, 1982, the Commission published an advance notice of proposed rulemaking ("ANPR") addressing rotational kickback of chain saws. 47 FR 19369. Under this ANPR, the Commission could have developed and, if appropriate, issued a mandatory safety standard for chain saws to address this risk. The Commission, however, may issue a mandatory standard, when a voluntary standard addressing the same risk has been adopted and implemented, only if the Commission concludes either that the voluntary standard is not likely to adequately reduce the risk or that it is unlikely that there will be substantial compliance with the voluntary standard 15 U.S.C. 2058.

In 1985, after years of work by the chain saw and saw chain industry, assisted by the Commission's staff, the American National Standards Institute adopted an amendment to its voluntary standard for gasoline-powered chain saws to require additional features intended to reduce the injuries associated with chain saw kickback. The Commission believes that the

amended ANSI standard, if universally followed by the manufacturers of chain saws and saw chains, will substantially reduce the number of kickback injuries that occur each year. Also, it appears that a large portion of the chain saw and saw chain industry will follow this voluntary standard. Accordingly, on August 30, 1985, the Commission terminated its mandatory standard development proceeding for chain saws, since it appeared that the risk of rotational kickback would be adequately reduced by implementation of the amendment to ANSI B175.1.

The requested survey will be used to determine the extent to which chain saws and saw chains manufactured or imported for sale to consumers conform to the amended voluntary standard.

This information will help determine whether further actions by the Commission are needed to address the risk of rotational kickback of chain saws.

Additional Details About the Requested Approval for Collection of Information

Agency Address: Consumer Product Safety Commission, 1111 18th Street NW., Washington, D.C. 20207.

Title of Information Collection: Kickback Amendment to the American National Standard—Safety Requirements for Gasoline Powered Chain Saws (ANSI B175.1).

Type of Request: Approval of new plan.

Frequency of Collection: One-time

General Description of Respondents: Importers and domestic manufacturers of chain saws and saw chains.

Estimated Number of Respondents: 25

Estimated Number of Hours for All Respondents: 100.

Comments: Comments on this request for approval of the collection of information should be addressed to Andy Velez-Rivera, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503; telephone (202) 395–7513. Copies of the request for approval of the collection of information are available from Francine Shacter, Office of Budget, Program Planning, and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492–6529.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: January 17, 1986.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission

[FR Doc. 86–1464 Filed 1–22–86; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Follow-on Force Attack; Changed Advisory Committee Meeting.

SUMMARY: The notice for the Defense Science Board Task Force on Follow-on Force Attack meeting on 27–28 January 1986 as published in the **Federal Register** (Vol 51, No. 4, Tuesday, January 7, 1986, FR Doc. 86–292.) has been changed to February 5, 1986. In all other respects the original notice remains unchanged.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 17, 1986.

[FR Doc. 86–1444 Filed 1–22–86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Subcontract Competition

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: Under authority granted by the Defense Acquisition Regulatory Council for a Service Test deviation from the FAR and DFARS for the period ending 30 September 1978, the Department of the Army intends to include the two provisions shown under **"SUPPLEMENTARY INFORMATION"** in solicitations and contracts in excess of $3 million awarded on a non-competitive basis to large business firms. These provisions will allow the Army to review proposed noncompetitive subcontracts, provide the Army an opportunity to encourage prime contractors to increase subcontract competition, and give the Army visibility of sole source prime contractor efforts in subcontracting competition.

Comments: Comments concerning this Notice should be submitted to the office at the address shown below on or before February 24, 1986 to be considered prior to implementation of the subject Service Test.

ADDRESS: Interested parties should submit written comments to: Directorate of Contracting, ATTN: Mr. Joseph Allison, Office of the Deputy Chief of Staff for Logistics, Department of the Army, Room 2E543, The Pentagon, Washington, DC 20310–0570.

Please cite DAR Case 85–947 in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Allison, Directorate of Contracting, ODCSLOG, HQDA, Telephone (202) 694–9001.

SUPPLEMENTARY INFORMATION:

A. Provisions

1. *Identification of Noncompetitive Subcontracts.* (a) Offerors shall submit to the contracting officer with their proposals, a listing of any item with an aggregate value estimated to exceed $25,000 which they intend to subcontract on a noncompetitive basis. For purposes of this noncompetitive subcontract indentification, the term "item" includes supplies, equipment, components, assemblies/subassemblies or services, and the term "subcontract" refers only to first tier subcontracts. Items sold or transferred at cost between any-divisions, subsidiaries, or affiliates of the offeror under a commom control need not be identified.

(b) For each item listed the following information shall be submitted:

(1) Nomenclature of the "item".

(2) End item application.

(3) Source.

(4) Reason for non-competitive purchase.

(5) Plans for future competition.

(6) Quantity.

(7) Unit price.

(8) Total price.

2. *Report of Subcontracting Competition.* (a) The contractor shall submit to the Procuring Contracting Officer, a quarterly report covering all subcontracts placed during the quarter. The report shall be submitted no later than the 25th day of the month following the end of the quarter.

(b) For the purpose of reporting, competition may be either price competition or design and technical competition.

(1) Price competition is defined as when offers are received from two or more offerors capable of providing the required supplies or services, either in whole or in part, and award or awards are made to one or more offeror(s), based on lowest evaluated price(s), to include catalog or market prices.

(2) Design and technical competition is defined as when design/technical proposals are obtained from two or more responsible sources and award or awards are based primarily on technical merit. In any event, cost should also be a factor. Competition includes orders placed or options exercised against existing competitively awarded contracts or agreements.

(c) Report shall include the following:

(1) Prime contract number.

(2) Period covered by report (e.g., the quarter ending Dec 85).

(3) The total dollar amount subcontracted during the quarter and cumulative amount since contract start.

(4) The dollar amount of subcontracts awarded on the basis of price competition during the quarter and cumulative amount since contract start.

(5) The dollar amount of subcontracts awarded on the basis of design or technical competition during the quarter and cumulative amount since contract start.

(6) The dollar amount of subcontracts awarded on a non competitive basis during the quarter and cumulative amount since contract start.

(7) A list of individual noncompetitive subcontracts in excess of $100,000, by contractor and dollar amount, placed during the reporting quarter.

B. Regulatory Flexibility Act

Pursuant to the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), it has been determined that this notice will not have any economic impact on small entities as defined in the Regulatory Flexibility Act and, therefore, no regulatory flexibility analysis has been prepared.

Dated: January 13, 1986.

Joseph Allison,

Directorate of Contracting, ODCSLOG, HQDA.

[FR Doc. 86-1379 Filed 1-22-86; 8:45 am]

BILLING CODE 3810-01-M

Engineers Corps, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Local Flood Protection Project Along Swan Creek at Toledo, Lucas County, OH

AGENCY: Army Corps of Engineers, Buffalo District, DOD.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. *Proposed Action:* The proposed action would alleviate flood damages along Swan Creek in the Heatherdale Drive area of Toledo, Lucas County, Ohio. Approximately 2,720 linear feet of earthen levees would be constructed along the left bank of the creek. At the Bethel Lutheran Church, where available space to construct a levee is limited, 200 linear feet ± of vertical concrete floodwall would be constructed. To allow for interior drainage, 24-inch culverts would be placed in the levee at three locations. Using a cut and fill technique, approximately 500 linear feet of creek channel would be straightened slightly and relocated to the southwest to improve the stream's hydraulics.

2. *Scoping Process:* Scoping for the DEIS will include continued coordination with affected Federal, State, and local agencies, as well as other interested parties. Formal scoping meetings are not planned at this time, however, all interested parties are urged to actively participate in the study by submitting in writing any concerns or recommendations to the Buffalo District.

Significant issues to be addressed in the DEIS include, but are not limited to fish and wildlife habitat, water quality, recreation, aesthetic values, cultural resources, health and safety, and other social impacts.

3. *Availability:* The DEIS is expected to be available for public and agency review in September/October 1986.

ADDRESS: Questions about the proposed action and DEIS can be answered by: Mr. William E. Butler, Environmental Analysis Branch, U.S. Army Corps of Engineers, Buffalo District, 1776 Niagara Street, Buffalo, NY 14207-3199.

Dated: January 13, 1986.

Daniel R. Clark,

Colonel, Corps of Engineers District Commander.

[FR Doc. 86-1376 Filed 1-22-86; 8:45 am]

BILLING CODE 3710-GP-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

[Docket No. CE-CP-MPRM-NY001]

Energy Conservation Program for Consumer Products; New York State Energy Efficiency Standard for Heat Pumps; Exemption Petition

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice.

SUMMARY: Today's notice publishes a petition from the Air Conditioning and Refrigeration Institute (ARI) requesting a rule from the Department of Energy (DOE) to preempt New York State's 8.5 SEER standard for heat pumps. DOE is soliciting comments, data and information regarding the petition.

DATE: DOE will accept comments, data and information not later than February 24, 1986.

ADDRESSES: Written comments (six copies) should be sent to: Department of Energy, Office of Conservation and Renewable Energy, Office of Hearings and Dockets, Docket No. CE-CP-MPRM-NY001, Room 6B-025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Mail Station CE-132, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station CC-12, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9513

U.S. Department of Energy, Conservation and Renewable Energy, Office of Hearings and Dockets, Room 6B-025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9319

Background

Part B of Title III of the Energy Policy and Conservation Act (EPCA) (Pub. L 94.163), as amended by the National Energy Conservation Policy Act (NECPA) (Pub. L 95-619),[1] created the Energy Conservation Program for Consumer Products Other Than Automobiles. Section 327 of the Act addresses the effect of Federal rules concerning testing, labeling, and standards on State laws or regulations concerning such matters. Generally, all such State laws or regulations are preempted by the Federal rule. Section 327(a). If, because there is no Federal rule, a State or local efficiency standard is not preempted, persons subject to it may petition DOE to have such a standard, in whole or in part, superseded on the basis that there is no significant State or local interest sufficient to justify the regulation and that such regulation unduly burdens interstate commerce. Section 327(b)(1). On December 22, 1982, DOE published a final rule that, among other provisions, sets forth the procedures by which persons subject to a State or local standard may obtain a rule to preempt that standard (47 FR 57198).

As provided by seciton 327(b)(1) of the Act and pursuant to the procedures outlined in the December 1982 rule, DOE has received a petition from the Air Conditioning and Refrigeration Institute (ARI) on behalf of ARI, Borg Warner Central Environmental Systems, Inc., Lennox Industries, American Standard and Rheem Manufacturing Company

[1] Part B of Title III of EPCA, as amended by NECPA, 42 U.S.C. 6291-6309, is referred to in this notice as the "Act."

requesting the Secretary of Energy to preempt New York State's minimum efficiency standard for heat pumps.[2] Section 16–118 of the New York State Energy Law prohibits the sale or installation of any heat pump manufactured after September 1, 1982, with a seasonal energy efficiency ratio (SEER) less than 7.5 and any heat pump manufactured after September 1, 1984, with a SEER less than 8.5. The petition addresses the New York requirement for heat pumps manufactured after September 1, 1984.

DOE received the petition on March 18, 1985, and received an amendment to the petition on July 15, 1985. However, the petition was deemed filed on September 17, 1985, when DOE received certification from ARI that the petition had been served on the New York State Energy Office. Section 430.42 of DOE's regulations requires that a petition for a rule to supersede a State or local regulation be served upon the State agency or department whose regulation the petitioner seeks to supersede.

A petition requesting DOE to supersede a State regulation is required to present information that would show why such regulation unduly burdens interstate commerce and that there is no significant State or local interest sufficient to justify the regulation. The petition argues that New York's standard imposes an undue burden on interstate commerce and that there is no significant State interest in maintaining the standard. The petition states that almost no energy savings can be attributed to the standard; that the standard reduces competition; that the standard is not adequately enforced; that the standard has no provision for hardship relief; and that market forces, not the standard, have been responsible for increasing levels in heat pump efficiency. In evaluating the petition, the Secretary is required to issue the requested rule only if it is determined that there is no significant State or local interest sufficient to justify the regulation and that the regulation unduly burdens interestate commerce.

Pursuant to 10 CFR 430.43, DOE is hereby giving notice of receipt of the petition. The petition is being published as part of this notice. DOE solicits comments, data and information respecting the petition.

[2] The petition submitted by ARI on behalf of ARI and the four manufacturers is referred to in this notice as the "ARI petition" or the "petition."

Issued in Washington, DC, January 7, 1986.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

Petition by Air-Conditioning and Refrigeration Institute for Preemption of Heat Pump Minimum Energy Efficiency Standard of State of New York

Filed: March 15, 1985

By: Air-Conditioning and Refrigeration Institute, 1501 Wilson Boulevard, Arlington, VA 22209

The Air-Conditioning and Refrigeration Institute (ARI) hereby petitions the Department of Energy to supersede New York's September 1, 1984, standard of 8.5 SEER on heat pumps.

ARI is a national trade association comprising manufacturers who collectively account for over 90 percent of U.S.-manufacturered air conditioning, refrigeration and heating products (other than room air conditioners). ARI consists of over 175 manufacturing members spread over 23 separate product sections. In addition to its trade association functions, ARI administers certification programs for air conditioning, refrigeration, and heating systems. These programs are open to members and non-members of the assocation alike.

This petition is made on behalf of ARI's Unitary Small Equipment Section. This section comprises 28 manufacturing members. This section is responsible for the Unitary Small Equipment Certification Program, whose participants produce air conditioning products for 53 brand names listed in the ARI Directory of Certified Unitary Air Conditioners. This petition reflects a consensus position of ARI's members, representing the majority views of the industry.

I. Statutory Basis for the Petition

The Energy Policy and Conservation Act, 42 U.S.C. section 6297(b)(1), provides that a petition may be submitted to DOE requesting it to prescribe a rule that supersedes a state regulation establishing an energy efficiency standard for a covered product that is not otherwise superseded. DOE is to issue the requested rule if it finds that (*a*) there is no significant State or local interest sufficient to justify such State regulation and (*b*) such State regulation unduly burdens interstate commerce.

II. The 8.5 SEER Standard on Heat Pumps Does Not Meet the Statutory Criteria

There is no significant State or local interest sufficient to justify the New York 8.5 SEER heat pump standard. In addition, that standard unduly burdens interstate commerce. Therefore, DOE should issue a rule that supersdes such standard.

Section 16–118 of the New York State Energy Law provides in relevant part that no heat pump manufactured after September 1, 1982, with less than a 7.5 SEER may be sold in New York; and no heat pump manufactured after September 1, 1984, with less than an 8.5 SEER may be sold in New York. (Section 16–118(4)(c).)

There are parallel provisions relating to central air conditioners. No central air conditioner manufactured after September 1, 1982, with less than an 8.0 SEER may be sold in New York; and no central air conditioner manufactured after September 1, 1984, with less than a 9.5 SEER may be sold in New York. (Section 16–118(4)(b).)

New York has petitioned DOE requesting that DOE's final rule determining that minimum energy efficiency standards on central air conditioners are unjustified should not preempt New York's standards on central air conditioners. This petition is currently pending before DOE. New York's 9.5 SEER standard has been the primary focus of the DOE proceedings on state petitions. ARI and others in the central air conditioning industry have argued vigorouly that the September 1, 1984, standard for central air conditioners should be preempted. The industry has argued that there is no significant state interest in the September 1, 1984, standard on central air conditioners and that it imposes an undue burden on interstate commerce. These are also the statutory criteria applicable to ARI's petition concerning New York's September 1, 1984, heat pump standard.

ARI believes that both standards should be superseded.

A. There is Not a Significant State Interest To Justify New York's 8.5 SEER Standard for Heat Pump

1. 8.5 SEER Standard Will Not Result in Significant Energy Savings

The 8.5 SEER standard cannot be justified on the basis of an alleged state interest in energy savings. Although New York, in its June 11, 1984 letter to DOE, claims that efficiency levels of 9.5 SEER for air conditioners and 8.5 SEER for heat pumps are justified in New

York, the analyis only addresses air conditioners. For that reason, ARI has performed calculations regarding potential energy savings in New York resulting from the 8.5 SEER standard for heat pumps.

The first calculation performed by ARI shows the heat pump standard will save 0.0008 of the total energy consumed by New York State. This is equivalent to reducing the amount of miles driven one year from 10,008 to 10,000 the next year. This can hardly be described as significant.

ARI's second analysis on potential energy saved from the heat pump standard is based on shipment data from the ARI statistics program and energy saved per unit based on SEER and an average unit size of 36,000 Btuh. Based on this calculation, the energy savings from the heat pump standard for New York are 0.00002 of the total New York energy consumption. To put it another way, this would mean a mileage reduction of 2/10 of a mile over 10,000 miles. Both calculations are described in detail in the appendix to this statement.

The lack of significance of the claimed energy savings can be put in another way based on ARI calculated energy savings. The State Energy Overview, dated October, 1983, produced by DOE's Energy Information Administration, shows that the total electrical energy consumption in the State of New York in 1982 was 106 billion kWh and its population was 17,598,000. Using the average rate of $0.1108/kWh, determined by the State and used in the supplement to its petition for exemption of preemption of its central air conditioner standards, to determine each person's share of the state electricity cost, the share is $667.32. When the savings to be realized by the 8.5 SEER standard are deducted the share is reduced to $667.20—a reduction of *12 cents per person.*

Again, this meager amount cannot represent a state interest of such magnitude as to justify being considered "significant."

2. New York Cannot Justify its Standard on the Basis of Alleged Market Failure

As indicated ARI's comments on New York's petition for exemption from preemption of its standard on central air conditioners (pp. 9–13) New York cannot justify its standards on the basis of alleged market failure.

ARI statistics show that the shipment-weighted average energy efficiency rating for central air conditioners (including heat pumps) rose from 6.66 ERR [2] in 1972 to 7.51 ERR in 1980 and to 8.6 SEER today.

In addition, as dicussed below, the record demonstrates a dramatic increase in the efficiency of appliances nationwide. This increase in the absence of national standards demonstrates that there is no need to impose standards including state standards. For example:

—The Antitrust Division of the Justice Department has stated that "there is no evidence that appliance markets have failed or will fail to produce desired energy efficiency objectives." Statement of Sanford Litvack, Assistant Attorney General, Antitrust Division, Department of Justice, Comment No. 1161, at 4 (Sept. 2, 1980).

—An Opinion Research Corporation survey (*Public Knowledge and Attitudes Towards Central Air-Conditioning Systems*, 1981) shows consumer willingness to spend up to one-third more for high efficiency air conditioners.

—A consumer preference survey by the National Association of Home Builders (*Decisions of the 80's*, Dec. 1980) showed that 60 percent of surveyed persons regarded energy-saving features as an important factor in selecting their homes and that 79 percent said it would be important if they moved again.

The improvements made in the efficiency of central air conditioners (including heat pumps) were and continue to be due to changes in consumer demand based upon the realization of American consumers that energy efficiency is an important factor in the purchase of energy consuming products. The increases in efficiency of air conditioners and heat pumps have occurred steadily on a yearly basis and are on a national level. New York cannot convincingly argue that its standards should receive credit for improvements in efficiences when New York only represents approximately 2.5 percent of the total number of units shipped in the United States.

3. New York Cannot Justify its 8.5 SEER Standard for Heat Pumps on the Basis That the Standard Exists

New York cannot justify the 8.5 SEER standard on the basis that the standard exists. The mere existence of a standard does not provide the "justification" required by Congress.

[2] The change in descriptor from ERR (energy efficiency ratio) to SEER (seasonal energy efficiency ratio) is a result of DOE and FTC rules. See 10 CFR Part 430, Subpart B (1984); *id.* at Appendix M; 16 CFR 305.4(d) (1984).

4. The 8.5 SEER Standards for Heat Pumps is Not Economically and Technologically Justified

An assessment of the state interest must take into account whether the standard is economically and technologically justified. The 8.5 SEER standard for heat pumps does not meet this criterion.

DOE has properly observed: "(t)here can be no doubt that a negative impact on manufacturers attributable to a standard is, no matter how small, a burden to be weighed," 49 FR 39386 (Aug. 30, 1984).

Companies must offer a full line [3] of products like larger corporations to compete effectively. A manufacturer may have a single model that meets a standard, but not a complete line. To be competitive it is essential that an air conditioning dealer who sells to consumers and builders have a full line of products, and it is standard practice for dealers to carry only one or two brands of products because it minimizes his problems related to stocking products, stocking parts, training employees and keeping current product information on hand. If a dealer has a full line of products he can closely match a homeowners building requirements. If he does not, he is likely to install an oversized unit that may not perform well and add to the peak load of the power company. Or, if a full line of products is not available to a dealer, he may not be able to compete in the marketplace and, therefore, competition would be reduced.

5. Lack of Enforcement

The lack of a significant state interest is further demonstrated by the lack of enforcement in New York.[4] Its feeble assertions about enforcement were strongly contradicted. At best, its enforcement has been so minimal that the efforts is asserted it has made (assuming they actually occurred) have gone virtually without notice.

In light of these factors DOE should determine that New York does not have a "significant state interest" with respect to its 8.5 SEER standard for heat pumps.

[3] A full line of products is a line of products manufactured is small capacity increments so that there is a unit capacity within approximately plus or minus 3,000 Btuh of any building load. For example, a full line of products to meet the DOE residential capacity range would have at least 8 models ranging from 18,000 to 65,000 Btuh.

[4] "A state which fails to enforce its own standard offers clear evidence of both a lack of significant state interest in the standard as well as the existence of undue burden on interstate commerce." (Hearing, Oct. 18, 1984, Transcript, p. 52.)

B. Undue Burden

It is clear that the 8.5 SEER standard for heat pumps causes an undue burden.

1. The 8.5 Standard for Heat Pumps is Economically and Technologically Unjustified

As discussed above the 8.5 standard is economically and technologically unjustified. This discussion establishes the existence of an undue burden. ARI adds only the following to what is has already said.

In determining whether the New York standard imposes an undue burden, ARI has asked those manufacturers that sell heat pumps in New York State whether they will be able to comply with the 8.5 SEER standard. It is important to note, as stated above in this statement that in order for a manufacturer, distributor, or dealer to compete effectively in any area, it must be able to offer a complete product line. Again, by this is meant a line of products manufactured in small capacity increments so that there is a unit capacity within approximately plus or minus 3,000 Btuh of any building load. For example, a full line of products to meet the DOE residential capacity range would have at least 8 models ranging from 18,000 to 65,000 Btuh.

Of twenty manufacturers of heat pumps we were able to contact, only three companies indicated they had a complete line of package heat pumps that meet or exceed the 805 SEER standard. In the split system category, only eight of the twenty manufacturers had a complete line of heat pumps. It is noteworthy that Howard Geller [5] of the American Council for an Energy-Efficient Economy, hardly a foe of standards, indicated at the DOE hearing on October 19, 1984, that a standard would not be appropriate if there are not a significant number of products that comply with it.

The twenty manufacturers we contacted includes all major manufacturers of heat pumps and represent a vast majority of the products sold in New York State. From this survey it is clear that a significant number of products do not meet the standards.

Standards calling for high efficiency levels impact manufacturers in different ways depending on their size. Therefore, the burden on each is different. If one classifies manufacturers broadly as small, medium and large, one can see that a large manufacturer might have at least 3 lines of equipment with efficiency levels classified as "good," "better," and "best." A small manufacturer who cannot normally afford to offer more than one line of products therefore is most likely to have models sold in the "better" range. For this reason, the small (and in some cases, medium size) manufacturers may not be able to provide models in a state that has the highest minimum efficiency levels. Because of this, there is a definite undue burden upon small and medium size manufacturers. In addition, the result is a lessening of competition and a tendency to raise prices in the state.

The burdens of standards are confirmed in the DOE rulemaking proceeding. DOE found that standards would impose "significant" "negative impacts on consumers at all standard levels." 48 FR 39406; see also *Id.* 39403–05. It further found that imposition of standards would have negative impacts on medium and small firms. *Id.* 39403, 39406. Such burdens "clearly outweigh" any small alleged benefits of standards. *Id.* 39406. ARI believes that these conclusions are also true with respect to heat pumps

2. Lack of Hardship Variance

It was revealed at the DOE hearing on October 1, 1984 in New York that there is no provision for a hardship variance with respect to New York's standards. It was clear at the hearing that this troubles the New State Energy Office, as well it should. Indeed, the Office indicated that it wishes that there were such a provision and that it had unsuccessfully sought one. The absence of a provision for hardship relief as to this onerous state standard undermines the legal validity of the state standard. That is even more so in the light of the admission by the responsible administrative agency that there should be such a provision.

3. Lack of Enforcement

Lack of enforcement is an additional burden. It burdens law-abiding persons by placing them in a potentially disadvantageous position. (Hearing, Oct. 18, 1984, Transcript pp. 52–55.)

Conclusion

ARL's petition should be granted.

Appendix

Assumptions

1. ARL believes it is reasonable to assume that the ration of heat pump to air conditioner shipments into New York is the same or cloe to the national ratio (Based on Central Air Conditioners covered by DOE rules; under 65,000 Btuh, single phase and air cooled.)

$$\text{National ratio} = \frac{\text{Annual national heat pump shipments}^a}{\text{Annual national air conditioner shipments}^a} = \frac{616{,}346}{1{,}659{,}384} = 0.37$$

[a] Industry data from the "ARI Comparative Study of Energy Efficiency Ratios" for 1983.

2. New York's analysis for air conditioners is based on improving SEER by 1.5 [9.5—8.0]. The improvement in heat pump SEER is 1.0 [8.5—7.5]. Therefore a new heat pump in the cooling mode would save only ⅔ [1.0/1.5] of the energy a new air conditioner would save.

Therefore, heat pump energy in the *cooling* mode is related to total air conditioner energy as follows:

Formula (1)=heat pump energy use in the cooling mode=0.247 [.37×⅔] times air conditioner energy use in the cooling mode.

To calculate heat pump energy in the heating mode, assume the percent improvement in the seasonal heating efficiency (HSPF) is directly proportional to the percent improvement of the SEER. (This will overstate energy savings a small amount) in the heating mode.

3. The heating hours of operation are:

6.9 [2750 heating hours[b]/400 cooling hours[b]] times the cooling hours.

Therefore, heat pump energy in the *heating* mode is related to air conditioner energy as follows:

Formula (2)=heat pump energy use in the heating mode=6.9×0.247×air conditioner energy use in the cooling mode

Then, total heat pump energy (cooling+heating) is Formula (1)+Formula (2):

Formula (3)=1.95 [7.9×0.247]×air conditioner energy used in the cooling mode.

First ARI Analysis

Based on figures from the New York Analysis, heat pump energy saved compared to total energy used by the state of New York is:

Air Conditioner Annual Savings=4.37×10^8 kWh/yr.[c]

[5] "In my opinion standards should be set at the level where there's a significant number of products currently being manufactured that meet the standard and can be sold" (Hearing, Oct. 19, 1984, Transcript p.387.)

[b] For New York (DOE Region V) *F.R.* Dec. 27, 1979 page 76723. Note, this ratio is probably too high and tends to overstate energy savings.

[c] Attachments to New York State Energy Office Letter of June 11, 1984 page 6. ARI believes New York's claimed energy saving is 44 times the actual savings.

Multiplier for Heat Pump = 1.95 [7.9 × 0.247] (see formula 3, page 13)

Total New York energy use = 3.59×10^{15} Btu/year[d]

Ratio of energy savings to total energy =

$$\frac{4.37 \times 10^{8}\ \text{kWh/yr} \times 3413\ \text{Btu} \times 1.95}{3.59 \times 10^{15}\ \text{Btu/yr kWh}} = 0.0008$$

Second ARI Analysis

Since the first analysis determined heat pump energy savings as a function of air conditioning savings, the same procedure is used in this, the second analysis for clarity.

Up to this point ARI has worked with energy savings based on numbers provided by New York. The New York values are not substantiated and ARI believes they are grossly exaggerated.

The following calculations are based on ARI shipment data and energy saved per unit based on SEER and an average unit size of 36,000 Btuh.

Annual Energy Used by a 36,000 Btuh air conditioner with an SEER of 8.0 is approximately:

$$= \frac{36{,}000\ \text{BTU} \times \text{w.h} \times \text{kw} \times 400\text{h}^{b}}{\text{h 8 BTU 1,000w yr}} = 1{,}800\ \text{kWh}$$

Annual Energy Used by a 36,000 Btuh air conditioner with an SEER of 9.5 is approximately:

$$= \frac{1{,}800\ \text{kwh} \times 8 = 1{,}516\ \text{kWh}}{9.5}$$

Then the saving using the higher efficiency is:

1800–1516 = 284 kWh annual per unit.

The average number of air conditioners and heat pumps shipped into New York per year over the last 5 years is 55,047[a] (based on ARI statistics).

To determine the number of air conditioners and the number of heat pumps shipped into New York annually, ARI used the national ratio of 0.37 determined on page 1.

Number of heat pumps = $0.37 \times 55047 = 20367$

Number of air conditioners = $(1 - 0.37) \times 55047 = 34680$

The annual energy savings for air conditioners is:

= 34680 units × 284 kWh saved per unit

$= 9.85 \times 10^{6}$ kWh

Then the annual energy savings for heat pumps in the cooling mode is, using Formula (1) from page 12 is:

$= 0.247 \times (9.85 \times 10^{6})$

$= 0.243 \times 10^{7}$ kWh

And annual energy savings for heat pumps in the heating mode is, using Formula (2) from page 13

$= 6.9 \times .247 \times (9.85 \times 10^{6})$

$= 1.68 \times 10^{7}$ kWh

Total Heat Pump Energy Saved equals heat pump energy saved in the cooling mode plus heat pump energy saved in the heating mode:

$= (0.243 \times 10^{7}) + (1.68 \times 10^{7})$

$= 1.92 \times 10^{7}$ kWh

The ratio of heat pump energy savings to total energy use by the state is:

$$= \frac{1.92 \times 10^{7}\ \text{kWh/yr} \times 3.413\ \text{Btu/kWh}}{3.59 \times 10^{15}\ \text{Btu/yr}} = 0.00002$$

This is equivalent to one driving 10,000.2 miles in one year then decreasing it to 10,000 the next year and saying the mileage was significantly reduced.

On the basis of ARI's calculated energy savings each person's share of the total New York electrical energy cost is reduced

$$\frac{1.92 \times 10^{7} \times 0.1108}{1.76 \times 10^{7}} = 12\text{c}$$

The total electric cost per person is presently

$$\frac{1.06 \times 10^{11} \times 0.1108}{1.76 \times 10^{7}} = \$667.32$$

ARI does not believe 12 cents is a significant amount of $667.32.

[d] State Energy Overview, DOE/EIA-0354 (82)

McDermott, Will & Emery

1850 K Street, NW, Washington, D.C. 20006, 202/887–8000

July 15, 1985.

By Hand Delivery

The Honorable Donna A. Fitzpatrick,
Acting Assistant Secretary for Conservation and Renewable Energy, Room 6C016, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585

Re: Amendment to Petition

Dear Secretary Fitzpatrick: On March 15, 1985, the Air-Conditioning and Refrigeration Institute filed a petition requesting that the Department of Energy supersede New York's September 1, 1984, Standard of 8.5 SEER on heat pumps. ARI has been informed that the following ARI member companies have authorized it to include them as petitioners in the petition: Borg Warner Central Environmental Systems Inc.; Lennox Industries; American Standard; Rheem Manufacturing Company. These companies have standing to be petitioners; among other things, their heat pumps are marketed in New York and they are therefore actually and directly impacted by the New York standard.

In the light of the foregoing, ARI hereby amends the petition to add the foregoing companies as petitioners.

Please let us know immediately if you have any questions concerning the foregoing.

Respectfully submitted,

John A. Hodges,

General Counsel, Air-Conditioning and Refrigeration Institute.

cc: Mr. Eugene Margolis, DOE; Mr. Michael McCabe, DOE; Mr. Joseph M. McGuire, ARI

McDermott, Will & Emery

1850 K Street, NW, Washington, D.C. 20006, 202/887–8000

September 13, 1985.

United States Department of Energy

"Section 327 Petition—Energy Efficiency Program for Consumer Products"

The Honorable Donna A. Fitzpatrick,
Assistant Secretary for Conservation and Renewable Energy, Mail Station, CE–1, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585

Dear Secretary Fitzpatrick: I hereby certify that today I have served by certified mail on the New York State Energy Office a petition dated March 15, 1985, to supersede New York State's September 1, 1985, minimum energy efficiency standard for heat pumps; my letter to you dated July 15, 1985; and my letter to Eugene Margolis dated July 24, 1985. The petition is on behalf of the Air-Conditioning and Refrigeration Institute; Borg Warner Central Environmental Systems Inc.; Lennox Industries; American Standard; and Rheem Manufacturing Company. Enclosed is my cover letter to the New York State Energy Office transmitting these documents.

Sincerely,

John A. Hodges.

Enclosure

cc: Eugene Margolis, Esq.

[FR Doc. 86-1325 Filed 1-22-86; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Publication of Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95-621) signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA, interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of a surcharge. The statute requires that the ultimate costs of gas to the industrial facility should not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA, section 204(e), the Energy Information Administration (EIA) herewith publishes for the Federal Energy Regulatory Commission (FERC) computed natural gas ceiling prices and the high cost gas incremental pricing threshold which are to be effective February 1, 1986. These prices are based on the prices of alternative fuels.

For further information contact: Leroy Brown, Jr., Energy Information Administration, 1000 Independence Avenue SW., Room BE-034, Washington, D.C. 20585, Telephone: (202) 252-6077.

Section I.

As required by FERC Order No. 50, computed prices are shown for the 48 contiguous States. The District of Columbia's ceiling is included with the ceiling for the State of Maryland. FERC, by an Interim Rule issued on April 2, 1981, in Docket No. RM79-21, revised the methodology for calculating the monthly alternative fuel price ceilings for State regions. Under the revised methodology, the applicable alternative fuel price ceiling published for each of the contiguous States shall be the lower of the alternative fuel price ceiling for the State or the alternative fuel price ceiling for the multistate region in which the State is located.

The price ceiling is expressed in dollars per million British Thermal Units (BUT's). The method used to determine the price ceilings is described in section III.

State	Dollars per million Btu's
Alabama	3.29
Arizona [1]	3.72
Arkansas [1]	3.25
California [1]	3.72
Colorado [2]	3.41
Connecticut [1]	3.52
Delaware [1]	3.85
Florida	3.49
Georgia [1]	3.61
Idaho [2]	3.41
Illinois [1]	3.26
Indiana	3.21
Iowa [1]	3.10
Kansas [1]	3.10
Kentucky [1]	3.26
Louisiana	3.21
Maine	3.48
Maryland [1]	3.85
Massachusetts [1]	3.52
Michigan	3.11
Minnesota	3.07
Mississippi [1]	3.61
Missouri [1]	3.10
Montana [2]	3.41
Nebraska [1]	3.10
Nevada [1]	3.72
New Hampshire	3.43
New Jersey [1]	3.85
New Mexico	3.11
New York	3.84
North Carolina [1]	3.61
North Dakota [1]	3.10
Ohio	3.10
Oklahoma [1]	3.25
Oregon	3.65
Pennsylvania	3.79
Rhode Island [1]	3.52
South Carolina [1]	3.61
South Dakota [1]	3.10
Tennessee [1]	3.61
Texas [1]	3.25
Utah [2]	3.41
Vermont [1]	3.52
Virginia	3.55
Washington	3.58
West Virginia [1]	3.26
Wisconsin [1]	3.26
Wyoming [2]	3.41

[1] Region based price as required by FERC Interim Rule, issued on April 2, 1981, in Docket No. RM-79-21.

[2] Region based price computed as the weighted average price of Regions, E, F, G, and H.

Section II. Incremental Pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York city Metropolitan area during November 1985 was $35.38 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NGPA, Title II, section 203(a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of BTU's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective February 1, 1986, is $7.93 per million BTU's.

Section III. Method Used To Compute Price Ceilings

The FERC, by Order No. 50, issued on September 29, 1979, in Docket No. RM79-21, established the basis for determining the price ceilings required by the NGPA. FERC also, by Order No. 167, issued in Docket No RM81-27 on July 24, 1981, made permanent the rule that established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the price ceilings. In addition, the FERC, by Order No. 181, issued on November 6, 1981, in Docket No. RM81-28, established that price ceilings should be published for only the 48 contiguous States on a permanent basis.

A. Data Collected

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1 percent sulfur content by weight) residual fuel oil: for each selling price, the number of gallons sold to large industrial users in the months of September 1985, October 1985, and November 1985.[3] All reports of volume sold and price were identified by the State into which the oil was sold.

B. Method Used to Determine Alternative Price Ceilings

(1) Calculation of Volume-Weighted Average Price

The prices which will become effective February 1, 1986, (shown in section I) are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, September 1985, October 1985, and November 1985. Reported prices for sales in September 1985 were adjusted by the percent change in the nationwide volume-weighted average price from September 1985 to November 1985. Prices for October 1985 were similarly adjusted by the percent change in the nationwide volume-weighted average price from October 1985 to November 1985. The volume-weighted 3-month average of the adjusted September 1985 and October 1985, and the reported

[3] Large Industrial User—A person/firm which purchases No. 6 fuel oil in quantities of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric utilities, governmental bodies (Federal, State, or Local), and the military are excluded.

November 1985 prices were then computed for each State.

(2) Adjustment for Price Variation

States were grouped into the regions identified by the FERC (see section III.C.). Using the adjusted prices and associated volumes reported in a region during the 3-month period, the volume-weighted standard diviation of prices was calculated for each region. The volume-weighted 3-month average price (as calculated in section III.B.(1) above) for each State was adjusted downward by two times this standard deviation for the region to form the adjusted weighted average price for the State.

(3) Calculation of Ceiling Price

The lowest selling price within the State was determined for each month of the 3-month period (after adjusting up or down by the percent change in oil prices at the national level as discussed in section III.B(1) above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to determine the State's average low price. The adjusted weighted average price (as calculated in section III.B.(2)) was compared to this average low price, and the higher of the values was selected as the base for determining the alternative fuel price ceiling for each State. For those States which had no reported sales during one or more months of the 3-month period, the appropriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State alternative fuel price ceiling base. The State's alternative fuel price ceiling base was compared to the alternative fuel price ceiling base for the multistate region in which the State is located and the lower of these two prices was selected as the final alternative fuel price ceiling base for the State. The appropriate lag adjustment factor (as discussed in section III.B.4) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon) was multiplied by 42 and divided by 6.3 to estimate the alternative fuel price ceiling for the State (expressed in dollars per million BTU's).

There were insufficient sales reported in Region G for the months of September 1985, October 1985, and November 1985. The alternative fuel price ceilings for the States in Region G were determined by calculating the volume-weighted average price ceilings for Region E, Region F, Region G, and Region H.

(4) Lag Adjustment

The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was determined that *Platt's Oilgram Price Report* publication provides timely information relative to the subject. The prices found in *Platt's Oilgram Price Report* publication are given for each trading day in the form of high and low prices for No. 6 residual oil in 20 cities throughout the United States. The low posted prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 high sulfur residual fuel oil for the ten trading days ending January 15, 1986, and dividing that price by the corresponding weighted average price computed from prices published by Platt's for the month of November 1985. A regional lag adjustment factor was similarly calculated for four regions. These are: one for FERC Regions A and B combined; one for FERC Region C; one for FERC Regions D, E, and G combined; and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each State in a given region as calculated in section III.B(3).

Listing of States by Region

States were grouped by the FERC to form eight distinct regions as follows:

Region A	*Region B*
Connecticut	Delaware
Maine	Maryland
Massachusetts	New Jersey
New Hampshire	New York
Rhode Island	Pennsylvania
Vermont	
Region C	*Region D*
Alabama	Illinois
Florida	Indiana
Georgia	kentucky
Mississippi	Michigan
North Carolina	Ohio
South Carolina	West Virginia
Tennessee	Wisconsin
Virginia	
Region E	*Region F*
Iowa	Arkansas
Kansas	Louisiana
Missouri	New Mexico
Minnesota	Oklahoma
Nebraska	Texas
North Dakota	
South Dakota	
Region G	*Region H*
Colorado	Arizona
Idaho	California
Montana	Nevada
Utah	Oregon
Wyoming	Washington

Dated: January 17, 1986.

L. A. Pettis,

Acting Deputy Administrator Energy Information Administration.

[FR Doc. 86-1475 Filed 1-22-86; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $459,929.76 (plus accrued interest) obtained as a result of a Consent Order which the DOE entered into with Eastern of New Jersey, Inc. of Jersey City, New Jersey (Case No. HEF-0065). The fund will be available to customers who purchased No. 4 residual fuel oil from Eastern during the consent order period.

DATE AND ADDRESS: Applications for refund of a portion of the consent order fund must be postmarked within 90 days of publication of this notice in the **Federal Register** and should be addressed to: The Eastern Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All applications should conspicuously display a reference to Case No. HEF-0065.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to a Consent Order entered into by Eastern of New Jersey, Inc. of Jersey City, New Jersey. The Consent Order settled possible pricing violations with respect to the firm's sales of No. 4 residual fuel oil during the November 1, 1973 through March 31, 1974 consent order period.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper

disposition of the consent order fund. The Proposed Decision and Order discussing the distribution of the consent order funds was issued on June 11, 1985. 50 FR 26252 (June 25, 1985).

As the Decision and Order indicates, applications for refunds from the consent order fund may now be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Applications will be accepted from customers who purchased No. 4 residual fuel oil from Eastern during the relevant consent order period. The specified information required in an application for refund is set forth in the Decision and Order. The Decision and Order reserves the question of the proper distribution of any remaining consent order funds until the first-stage claims procedures is completed.

Dated: January 10, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

January 10, 1986.

Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: Eastern of New Jersey, Inc.
Date of Filing: October 13, 1983.
Case Number: HEF-0065.

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR Part 205, Subpart V, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on October 13, 1983. The petition requests that the OHA formulate and implement procedures for the distribution of funds received pursuant to a Consent Order entered into by the DOE and Eastern of New Jersey, Inc. (Eastern) of Jersey City, New Jersey.

I. Background

Eastern is a "reseller-retailer" of "No. 4 residual fuel oil" as these terms were defined in 10 CFR 212.31. An ERA audit of Eastern revealed possible violations of the Mandatory Petroleum Price Regulations in the amount of $2,271,245.32 with respect to the firm's sales of No. 4 residual fuel oil during the period November 1, 1973 through March 31, 1974. Subsequently, Eastern entered into a Consent Order with the DOE on December 12, 1979 in which Eastern agreed to remit $425,000 to the DOE in order to settle its disputes with the DOE regarding these sales. This Consent Order refers to the ERA's allegations of overcharges, but notes that no findings of violation were made. In addition, it states that Eastern does not admit that it committed any such violations. The funds remitted by Eastern are currently being held in an interest-bearing escrow account pending distribution by the DOE.

On June 11, 1985, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the consent order fund. *Eastern of New Jersey, Inc.*, 6 Fed. Energy Guidelines ¶ 90.080. We stated in the PD&O that the basic purpose of a special refund proceeding is to make restitution for injuries that were suffered as a result of alleged or adjudicated violations of the DOE regulations. In order to effect restitution in this proceeding, we proposed to establish a claims procedure whereby applications for refund would be accepted from customers who can demonstrate that they were injured as a result of the alleged overcharges made by Eastern during the November 1, 1973 through March 31, 1974 period (hereinafter known as the consent order period). A copy of the PD&O was published in the **Federal Register** on June 25, 1985 and comments were solicited regarding the proposed refund procedures. 50 FR 26252 (June 25, 1985). In addition, a copy of the PD&O was sent to those Eastern customers whose names and addresses were listed in the ERA audit files. While none of Eastern's customers filed comments on the proposed procedures, comments were filed on behalf of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia.[1] These comments argue that state governments are the appropriate recipients of second stage refunds. However, the purpose of this Decision and Order is limited to establishing procedures to be used for filing and processing claims in the first stage of the present refund proceeding. The formulation of procedures for the final disposition of any remaining funds will necessarily depend on the size of the funds. Therefore, it would be premature for us to address the issues raised by the States' comments concerning the disposition of any residual funds until after all meritorious first stage claims have been paid.[2]

II. Jurisdiction and Authority

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. It is DOE policy to use the Subpart V process in order to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). As we stated in the PD&O, we have reviewed the record in the present case and have determined that a Subpart V proceeding is an appropriate mechanism for distributing the Eastern consent order fund. We will therefore grant the ERA's petition and assume jurisdiction over this fund.

III. Refund Procedures

With the exception of the comments referred to in n. 1 *supra*, we have received no objections regarding our proposed refund procedures. Accordingly, we have determined that

[1] Comments on the PD&O were also filed by Eastern in which the firm contended that the PD&O should be withdrawn. In support of its position, Eastern asserted that the ERA had initiated the Eastern Subpart V proceeding in violation of a post-consent order agreement signed by Eastern and the DOE on April 16, 1982. This agreement provided that the Eastern consent order fund would be distributed by the DOE by means other than a Subpart V proceeding. Eastern also requested that the PD&O be withdrawn on the grounds that the resolution of two court cases involving the Eastern Consent Order could affect the disposition of the funds paid into escrow by Eastern. In one case, Eastern had filed a suit in the United States Claims Court in which it asserted that the interest which had accrued on its installment payments already in escrow offset the remaining amount of principal due, thus eliminating the firm's obligation to make the last payment. In the other case, the Government had filed a suit in Federal district court to collect the outstanding installment payment and enforce the terms of the Consent Order which provided that the Eastern consent order fund would be distributed through a Subpart V proceeding. According to the Government, the April 16, 1982 post-consent order agreement was negated by Eastern's failure to remit the final installment payment to the DOE.

On November 18, 1985, Eastern entered into stipulations with the Government which effectively concluded these two judicial proceedings. *Eastern of New Jersey, Inc.* v. *United States*, No. 316-84C (Cl. Ct. November 18, 1985), and *United States* v. *Eastern of New Jersey, Inc.*, No. 84-3718A (D. N.J. November 18, 1985). Eastern agreed to the dismissal with prejudice of its suit in the Claims Court. In addition, the district court case was settled in conjunction with Eastern's agreement to make its final payment, plus interest, to the DOE. Eastern also agreed to withdraw any other claims it had regarding the Consent Order, to cooperate with OHA in providing information deemed useful in distributing the consent order funds, and not to attempt to participate in the determination of any refund distributions by OHA. In view of these stipulations, Eastern's comments regarding the validity of the PD&O are moot and will not be considered further.

[2] It is not clear, however, that any of these States have a direct interest in this proceeding because none of the No. 4 residual fuel oil sales took place in these States.

these procedures should be adopted. The distribution of refunds will take place in two stages. In the first stage refund monies will be refunded to those customers who purchased No. 4 residual fuel oil from Eastern during the consent order period and who demonstrate that they were injured by the alleged overcharges of the consent order firm. Such purchasers must file claims and document their purchases in order to be eligible for a portion of the consent order fund.

After meritorious claims are paid in the first stage, a second stage may become necessary to distribute any remaining funds. *See generally Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). As we have indicated, however, we will not discuss second stage refund procedures in this Decision and Order.

A. Refund Claimants

The ERA audit file lists the names and addresses of approximately 1,200 customers who purchased No. 4 residual oil from Eastern during the consent order period, along with the number of gallons each customer purchased. This information is listed in the Appendix to this Decision and Order. In our view, these identified customers are most likely the parties who were adversely affected by any overcharges by Eastern. However, we recognize that there may be other purchasers of No. 4 residual fuel oil from Eastern who were not listed in the ERA audit file and who may have been injured by the firm's pricing practices during the consent order period. We will therefore accept applications from any party that can show injury resulting from Eastern's alleged overcharges.

B. Showing of Injury

All of the customers identified in the ERA audit file appear to have been end-users of the No. 4 residual fuel oil purchased from Eastern. In many previous Subpart V Decisions, we have made a finding that end-users and ultimate consumers whose businesses ae unrelated to the petroleum industry were injured by the alleged overcharges settled in the Consent Order. *See, e.g., Office of Enforcement*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), and cases cited therein. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period and thus were not required to keep records which justified selling price increases by reference to cost increases.

For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *Id.* We have received no comments objecting to this finding and will therefore adopt it in this proceeding. Thus, in order to qualify for a refund from the Eastern consent order fund, end-users who purchased Eastern No. 4 residual fuel oil need only document their purchase volumes from the firm to make a sufficient showing that they were injured by the alleged overcharges.[3]

C. Calculation of Refund Amounts

In the PD&O, we proposed to use a volumetric method to divide the Eastern consent order fund among the applicants who demonstrate that they are eligible to receive refunds. The volumetric refund method presumes that the alleged overcharges of a consent order firm were spread equally over all gallons of product marketed by that particular firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

We have received no comments objecting to our proposed use of the volumetric refund presumption. Accordingly, we will use the volumetric method to allocate the consent order funds. We have determined the volumetric refund factor by dividing the Eastern consent order amount by the estimated total volume of No. 4 residual fuel oil sold by Eastern during the consent order period. This results in a refund amount of $0.008556 ($459,929.76 divided by 53,753,070 gallons)[4] for each gallon of No. 4 residual fuel oil which an applicant purchased from Easten during the consent order period. In addition, the interest which has accrued on the money in escrow will be added to the refund of each successful applicant in proportion to the size of its refund.

Since a Consent Order is necessarily the result of compromise, the volumetric refund amount derived from that Consent Order settlement is also a compromise. The volumetric refund amount does not purport to refund the exact amount that a customer may have been overcharged. Rather, it is a method by which a customer can receive an appropriate proportion of the consent order fund. We recognize that a particular purchaser could have suffered a disproportionate share of the injury. Therefore, any purchaser may file a refund application based on a claim that its share of the alleged overcharges was greater than the pro rata amount determined by the volumetric presumption.

We shall also adopt our proposal to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b).

IV. Application for Refund Procedures

We have determined that the procedures described in the PD&O are the most equitable and efficacious means of distributing the Eastern consent order fund. Accordingly, we shall now accept applications for refund from customers who purchased No. 4 residual fuel oil from Eastern during the consent order period. The following information should be included in all Applications for Refund:

1. The case number HEF–0065 and the applicant's name should be prominently displayed on the first page.

2. The name, position title, and telephone number of a preson who may be contacted by us for additional information concerning the Application.

3. The manner in which the applicant used the consent order firm's No. 4 residual fuel oil, i.e., whether it was a reseller or end-user.

4. The volume of Eastern No. 4 residual fuel oil that the applicant purchased in each month of the period of time for which it is claiming it was injured by the alleged overcharges. Alternatively, an applicant may submit a statement certifying that the purchase volume listed beside its name in the Appendix is correct.

5. If the applicant is a reseller who wishes to claim a refund in excess of $5,000, it should also:

(a) State whether it maintained banks of unrecouped product cost increases

[3] In the PD&O, we stated that Eastern's customers included resellers of petroleum products. However, further review of the ERA audit file indicates that all of the identified purchasers of No. 4 residual fuel oil were end-users. If there were any resellers who purchased No. 4 residual fuel oil from Eastern, they would be eligible to apply for refunds. Such applicants, however, would have to make the showing of injury required of resellers in other Subpart V proceedings if applying for a refund of over $5,000. *See, e.g., Champlain Oil Co.*, 13 DOE ¶ 85,119 at 88,329 (1985).

[4] On November 18, 1985, Eastern remitted the balance due on the consent order amount to the DOE. *See* Stipulation *United States* v. *Eastern of New Jersey, Inc.*, No. 84–3718A (D. NJ. November 18, 1985). The principal amount now in escrow ($459,929.76) is larger than the original consent order settlement amount as a result of the interest which accrued prior to payment of the final installment. Accordingly, the volumetric refund amount set forth above is greater than that which was tentatively established in the PD&O.

and furnish the OHA with quarterly bank calculations, and

(b) Submit evidence to establish that it did not pass through the alleged injury to its customers. For example, a firm may compare the prices it paid for Eastern No. 4 residual fuel oil with the prices paid for the product by its competitors to show that price increases to recover alleged overcharges were infeasible.

6. A statement of whether the applicant was in any way affiliated with Eastern. If so, the applicant should state the nature of the affiliation.

7. A statement of whether there has been any change in ownership of the entity that purchased No. 4 residual fuel oil from Eastern since the end of the consent order period. If so, the name and address of the current (or former) owner should be provided.

8. A statement of whether the applicant is or has been involved as a party in any DOE or private section 210 enforcement actions. If these actions have been terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of its application for refund. *See* 10 CFR 205.9(d).

9. The following signed statement:

I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief.

All Applications for Refund must be filed in duplicate and must be received within 90 days after publication of this Decision and Order in the **Federal Register.** A copy of each Application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E–234, 1000 Independence Avenue, SW, Washington, DC. Any applicant that believes that its Application contains confidential information must so indicate on the first page of its Application and submit two additional copies of its Application from which the material alleged to be confidential has been deleted, together with a statement specifying why the information is alleged to be privileged or confidential.

All Applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

It is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by Eastern of New Jersey, Inc. pursuant to the Consent Order executed on December 12, 1979, may now be filed.

(2) All Applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: January 10, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appendix.—Eastern of N.J., HEF–0065

Note.—In some cases, Eastern customers had more than one delivery location and wished to be billed separately for each location. Such customers may be listed more than once in the following Appendix.

Also note.—We sent copies of the PD&O to all of the customers listed in the Appendix. Many of the PD&O's were returned to this Office, however, because of incorrect addresses. We have placed an asterisk ("*") by these customers' names to signify that we will not at this time be mailing them copies of this determination. They do, however, remain eligible for refunds and may contact this Office to request a copy of this Decision and Order. We also plan to enlist the aid of local authorities in obtaining correct addresses for them.

Name and address of firm	Volume purchased (in gallons)
Dairy Pak, P.O. Box 760, Morristown, NJ 07960	45,321
Lafayette Gdns., 37 Mountain Ave., Springfield, NJ 07081	18,673
*Lionel Toy-W Staheli, 289 Sager Pl., Hillside, NJ 07205	155,069
ABC Crating Co., 121 Erie St., Paterson, NJ 07524	20,676
*1304 Springfield Assoc. Inc., M.J. Goldstein, 2810 Morris Ave., Union, NJ 07083	14,890
A.C. Chevrolet, 3085 Blvd., Jersey City, NJ 07306	14,269
A.J. Realty Co., 91 Chatham Terrace, Clifton NJ 07013	9,456
D. Szabadhegy, C.P.A., 666 Fifth Ave., New York, NY 10019	14,873
*Independent Mgt., Co., 744 Broad St., Newark, NJ 07102	58,252
Abels Lewit Co., Inc., 237 Park Ave., Paterson, NJ 07501	11,155
Tzeses Bros., Inc., 343 Cumberland Rd., S. Orange, NJ 07079	14,863
Academy of Holy Angels, 355 Hillside Ave., Demarest, NJ 07627	37,160
Accurate Bushing Company, 443 North Avenue, Garwood, NJ 07027	41,895
Accurate Mfg., Co., 44 Hepworth Pl., Garfield, NJ 07026	49,188
Accutec Inc., 168 Main Ave., Wallington, NJ 07057	9,665
*Acme Air Appliance Co., Inc., 100 Pennsylvania Avenue, Brooklyn, NY 11207	22,795
*Acme Leather Sports, 335 S. Park St., Elizabeth, NJ 07206	15,008
Acme Metal Goods Mfg., Co., 2 Orange St., Newark, NJ 07102	17,533
Danco Mfg. Co., 163 Bloomfield Ave., Verona, NJ 07044	12,714
Dartmouth Village, Inc., P.O. Box 25, Parsippany, NJ 07054	119,771
*Data Trends, Inc., P.O. Box 82, Mountain Lakes, NJ 07046	6,000
*Davanne Realty, 101 Terrace, S. Orange, NJ 07079	7,352
David Gardens, Inc., 1055 S. Elmora Ave., Elizabeth, NJ 07202	7,872
*James-Helen Delaney, 19 Franklin Terrace, So. Orange, NJ 07079	24,196
Deli Products Corp., 447 Hillside Ave., Hillside, NJ 07205	26,852
*DeVoe Realty Co., 384 E. 21st St., Paterson, NJ	19,441
R.D. Serr Co., P.O. Box 322, Short Hills, NJ 07078	22,355
*Devonshire Tower Assoc., 20 Evergreen Place, E. Orange, NJ 07018	45,742
DeWildes Greenhouses, 11 Roome Avenue, Pompton Plains, NJ 07444	24,907
Wilson Kaplan, 80 Huguenot Ave., Englewood, NJ 07631	43,140
Garden Homes Ag.-Parsip., 1640 Vauxhall Rd., Union, NJ 07083	102 146
*Lakeview Gdn. Rlty. Corp., P.O. Box 633, Fairlawn, NJ 07410	22,260
Robert D. Schlenger Co., 225 Millburn Ave., Millburn, NJ 07041	12,187
Star Glo Rubber Co., 45 Carlton Ave., E. Rutherford, NJ 07073	29,994
Airport Realty Corp., 19 Wall St., Passaic, NJ 07055	21,281
*Le Courtenay Co., 5 Main St., Newark, NJ 07109	3,550
Wills Oil Co., Rt. 183, Netcong, NJ 07857	62,442
Severino Realty Co., 15 Washington Ave., Cliffside Park, NJ 07010	21,866
Leeming Pacquin, Div. of Pfizer, Inc., 100 Jefferson Rd., Parsippany, NJ 07054	89,377
Adamas Carbide Corp., Market-Passaic, Kenilworth, NJ 07033	8,847
Adam Industries, 1110 Springfield Rd., Union, NJ 07083	99,655
*Adams Laundry Service, Inc., 601 65th St., West New York, NJ 07093	12,915
Aero Marine Term. Plt., Bushwich Realty Corp., 401 Broadway, New York, NY 10013	49,317
Airwick Inc., P.O. Box 203, Carlstadt, NJ 07072	41,500
*All Disc Records, 625 W. 1st Ave., Roselle, NJ 07203	187,219
*Allied Distilled Water, 101 Clifton Blvd., Clifton, NJ 07011	20,942
All Star Dairies, Inc., P.O. Box 1250, Perth Amboy, NJ 08862	41,495
Diamond Expan Bolt Co., 500 North Ave., Garwood, NJ 07027	51,462
*Diamond Shamrock Chem., 60 Park Pl., Newark, NJ 07102	70,903
Dillan Assoc., 180 Madison Avenue, New York NY 10016	27,114
Display Box Co., 310 Passaic St., Harrison, NJ 07029	24,351
*Ditto, Inc., Route 17, Lodi, NJ 07644	26,816
Don Bosco High School, N. Franklin Tpk., Ramsey, NJ 07446	45,912
Don Bosco Tech. Hi School, 202 Union Ave., Paterson, NJ 07502	41,666
All State Can Co., 40 Isabella St., Clifton, NJ 07012	17,409
Allyn-Bacon Co., Industrial Pk., Rockleigh, NJ 07647	31,507
General Cable Co., 25 Van Dyk, N. Brunswick, NJ 08903	33,244
William Givone, 42 Fencask Ave., Elmwood Park, NJ 07470	14,714
Ardis-Leigh Assoc., 425 Christiani St., Roselle, NJ 07203	14,265
Ardmore House, Inc., 1428 South Ave., Plainfield, NJ 07062	8,820
*Eastborne Corp., 349 E. Northfield Rd., Livingston, NJ 07030	10,786
Mr. Jos. Bigel, 60 Park Pl., Newark, NJ 07102	27,163
Arlington Molding Co., 287 Laurel Ave., Kearny, NJ 07032	7,622
John J. Armitage & Co., 245 Thomas St., Newark, NJ 07114	33,197
Arol Chemical Co., Inc., 649 Ferry St., Newark, NJ 07105	30,340
*Herman Neuman, 388 Old Country Rd., Garden Cty, L.I., NY 11530	39,306
Arrow Uniform Supply, 385 Fifth Ave., Newark, NJ 07107	33,122
*Artistic Creations, P.O. Box 591, Linden, NJ 07036	13,938
Artley Studios, Inc., 2 School St., Newark, NJ 07103	9,056
*Ashland Rd. Greenhouse, 213 Ashland St., Summit, NJ 07901	12,?16
Atlantic Alloy Ind., Polk & Jefferson Ave., Union, NJ 07083	17,946
Atlantic Chem. Corp., 10 Kingsland Rd., Nutley, NJ 07110	195,985

Name and address of firm	Volume purchased (in gallons)
Atlantic Highland Real. Est. Co., 10 Ocean Blvd., Atlantic Highlands, NJ	39,246
*Alphonsus College, 87 Overlook Drive, Woodcliff Lakes, NJ 07680	22,272
Joseph M. Bass, 134 Evergreen Pl., E. Orange, NJ 07018	26,620
American Aluminum Co., 230 Sheffield St., Mountainside, NJ 07092	49,643
American Can Co., Pierson Ave., Edison, NJ 08817	122,205
Anderson Florist, 40 Brookdale Rd., Florham Pk., NJ 07932	54,429
*Andrea Towers, Inc., 70 So. Munn Ave., E. Orange, NJ 07018	48,137
Annin Co., 163 Bloomfield Ave., Verona, NJ 07044	21,702
Apex Apartments, 27 Douglas Dr., Clark, NJ 07066	12,905
Apex Chemicals Co., Inc., 200 So. 1st St., Elizabethport, NJ 07206	32,803
Atlantic Tubing Co., 107 E. 17th St., Paterson, NJ 07514	7,833
*Ayerst Labs., Inc., 245 Paterson Ave., Little Falls, NJ 07424	19,595
Henry Lesher, 561 Northfield Rd., West Orange, NJ 07052	29,561
*Dorlen Realty, 1009 S. Orange Ave., Newark, NJ 07106	18,864
Dorlen Realty, 393 Hartford Rd., So. Orange, NJ 07079	17,590
Dover Handbag Co., Inc., Rt. 46 Flanders Rd., Netcong, NJ 07857	28,481
R.L. Draisin Co., 229 Main St., Belleville, NJ 07109	9,056
Drawad Inc., P.O. Box 8, W. Orange, NJ 07052	2,430
*Drico Industrial Corp., 480 Main Ave., Wallington, NJ 07055	20,668
H.O. Keller, 12 Ferndale Rd., Short Hills, NJ 07078	61,908
Dumont Terrace, 155 Riverside Dr., New York, NY 10024	175,029
*Duncan Terrace, 26 Journal Sq., Jersey City, NJ 07306	43,628
Dunlop Tire Rubber, P.O. Box 1109, Buffalo, NY 14240	63,476
*Dwight Manor Apt., Inc., 25 Bway Room 2240, New York, NY 10004	49,540
BGB Company, 407 Mulberry St., Newark, NJ 07102	21,339
*Baime Brothers, 195 Prospect St., East Organe, NJ 07017	44,381
*Balmoral Arms, c/o Liv Kelly, 33 Evergreen Place, East Orange, NJ 07018	27,919
Bambergers-Expense Pay Dept., Box 489, Newark, NJ 07101, Attn: Greg Shields	216,676
Leland Gdns., c/o Wilson R. Kaplan, 80 Huguenot Ave., Englewood, NJ 07631	105,166
Theo Leonard Wax Co., P.O. Box 8385, Haledon, NJ 07508	9,900
Wm. J. Phillips, Inc., 2056 Lemoine Ave., Ft. Lee, NJ 07024	13,551
Leonia Manor Inc., 574 Grand Ave., Englewood, NJ 07631	27,133
Les-Gertrude Apt., 345 Broad St., Red Bank, NJ 07701	33,913
Lexington Improvement Co., P.O. Box 817, Somerville, NJ 08876	24,691
Lexington, Gdns. P.O. Box 752, E. Orange, NJ 07017	26,111
*Mid-Atlantic Mgt. Corp., 10 Parsonage Road, Edison, NJ 08817	30,452
Liberty Optical Mfg., Co., Inc., 380 Verona Ave., Newark, NJ 07104	17,461
Liberty Provisions Inc., 200 Piaget Ave., Clifton, NJ 07011	31,673
Lidgerwood Apts. Inc., P.O. Box 306, South Orange, NJ 07079	20,929
Lily White Laundry Co., 234 Scotland Rd., Orange, NJ 07050	30,041
Lincoln Tech. Inst., 2299 Vauxhall Rd., Union, NJ 07083	19,300
Doria Inc., Suite 401, 91-31 Queens Blvd., Elmhurst, NY 11373	34,192
Linden Arms, P.O. Box 43, Livingston, NJ 07039	24,652
Plaza Corp., 560 Sylvan Ave., Englewood, NJ 07631	9,925
Linden Packing Co., Inc., 324 Astor St., Newark, NJ 07114	29,723
*Lindsley Arms Apts., P.O. Box 2126, Union, NJ 07083	66,765
*Investors Fund Corp., 630 Fifth Ave., New York, NJ 10020	47,377
*Frank H. Taylor & Sons, Inc., 23 S. Harrison St., E. Orange, NJ 07018	46,169
R.D. Serr Co., P.O. Box 322, Short Hills, NJ 07078	30,461
*Chestnut Assoc., Box 175, Florham Park, NJ 07952	8,908
*Londat Aetz Fabric Co., 940 Woodruff La., Elizabeth, NJ 07205	34,250
Thomas Fuel Corp., 702 Ramsey Ave., Hillside, NJ 07205	16,766
John Lukiw., 40 Ridgewood Avenue, Irvington, NJ 07111	5,297
*Luminal Paints, 411 Wilson Avenue, Newark, NJ 07105	32,849
*Lyndhurst Laundry, 290 Grant Ave., Lyndhurst, NJ 07071	18,665
Lisher Realty Corp., 20 New York Ave., Jersey City, NJ 07307	6,871
Alexander Summer Inc., 222 Cedar Lane, Teaneck, NJ 07666	173,408
M.H. Properties, 10 Kirkvw Cle., Westfield, NJ 07079	19,100
Medan Plastic Inc., 370 North Ave., Cranford, NJ 07016	22,469
*Madison Ave. Apts., 19 Franklin Terr., So. Orange, NJ 07079	12,943
Bonded Realty Co., 744 Broad St., Newark, NJ 07102	16,718
Almire Assoc., 71 Valley St., S. Orange NJ 07079	22,291
*Madison Mall, 2414 Morris Ave., Union, NJ 07083	35,230
Madsen-Christensen, 304 Hackensack St., Woodridge, NJ 07075	14,291
*Magnus Organ Corp., 1600 W. Edgar Rd., Linden, NJ 07036	25,451
Magruder Color Co., 1 Virginia St., Newark, NJ 07114	21,421
Majestic Ind. Inc., 80 Leuning St., S. Hackensack, NJ 07606	20,977
Manner Dye Finish Co., 293 Morrissee Ave., P.O. Box 8036, Haledon, NJ 07508	74,426
Manning-Lewis Engr. Co., 675 Rahway Ave., Union, NJ 07083	6,700
Passaic Pros. Rlty., 210 Delawanna Ave., Clifton, NJ 07014	11,158
*Mr. David De Vaney, 210 W. Passaic St., Rochelle Park, NJ 07662	12,249
*85-68th St. Corp., c/o Frieman Rlty. Co., 1969 Morris Ave., Union, NJ 07083	27,705
*85-68th St. Corp., c/o Frieman Rlty. Co., 1969 Morris Ave., Union, NJ 07083	10,157
E.C. Electro Plating, 125 Clark St., Garfield, NJ 07026	34,309
*F. Weisbrod-Wilfred, 61 S. Munn Avenue, E. Orange, NJ 07018	86,584
Leslie Prop. Inc., 137 Mineral Spring Ave., Passaic, NJ 07055	27,782
*Mrs. Halpren Rec., Eastern-Shok Beton, 45 East High St., Sommerville, NJ 08876	42,517
East Park Apts., 1480 Rt. 46, Parsippany, NJ 07054	15,362
*Eastwood Nealley Corp., 28 Joralemon St., Belleville, NJ 07109	133,271
Echo Lanes Inc., Rt. 22, Mountainside, NJ	19,698
*Edenboro Apts., 1150 Springfield Ave., Irvington, NJ 07111	25,868
Edgar Gdns. Assoc., 249 W. Jersey St., Elizabeth, NJ 07202	9,158
Efka Plastics Corp., 163 Ave. A, Bayonne, NJ 07002	18,407
Egan Machinery, P.O. Box 671, Somerville, NJ 08876	21,440
Mr. Samuel Scott, 49 Woodbridge Ave., Highland Park, NJ 08904	16,630
*Elberon Devel. Co., Inc., 1439 N. Broad St., Hillside, NJ 07205	53,972
*Electro Miniature Corp., 600 Huyler Ave., S. Hackensack, NJ 07608	12,326
*Elizabeth Cart Rlty., 1155 E. Jersey St., Elizabeth, NJ 07201	36,727
R.E. Scott Co., 400 Westfield Ave., Elizabeth, NJ 07208	121,649
Elizabeth Daily Journal, 295 N. Broad St., Elizabeth, NJ 07207	20,700
Mr. Jacob Rudd, P.O. Box 277, Maplewood, NJ 07040	16,672
Elm Gardens Inc., 185 Valley St., So. Orange, NJ 07079	12,067
Bambergers, c/o Greg Shields, 131 Market St., Newark, NJ 07107	21,400
C-R Bard Inc., 731 Central Ve., Murray Hill, NJ 07971	51,017
*Barhite & Holzinger, 342 Madison Ave., New York, NY 10017	10,000
Barnet Memorial Temple, 13th & Wall Ave., Paterson, NJ 07504	9,095
Barry Gardens, 245 Passaic Ave., Passaic, NJ 07855	36,260
Baum Realty Co., 35 Mayflower Dr., Tenafly, NJ 07670	65,783
*Rojay Mgt. Co., 20 Evergreen Pl., E. Orange, NJ 07018	138,616
General Looms Inc., 411 Alfred Ave., Teaneck, NJ 07666	39,754
Beamil Rlty. Co., Boright Ave., Kenilworth, NJ 07033	25,551
Beckley Perforating Co., 299 North Avenue, Garwood, NJ 07027	30,406
Beecham Prod. Div. Beecham, 101 Possumtown Rd., Piscataway, NJ 08854	183,952
Beecham Pharm-Div. Beecham, 101 Possumtown Rd., Piscataway, NJ 08854	139,505
Beechwood Gardens, 71 Valley St., So. Orange, NJ	29,976
Beisler Weidmann Co., 233 Cortlandt St., Belleville, NJ 07109	26,475
Belar Realty Co., 110 Edison Pl., Newark, NJ 07102	55,677
*Belfer Realty Co., 9060 Palisade Ave., No. Bergen, NJ 07047	74,708
*Renee Law Realty Agency, 125 Northfield Ave., W. Orange, NJ 07052	17,246
Bella Vista Apts., 574 Grand Ave., Englewood, NJ 07631	78,394
*J-J Realty Co., 22 John St., Haledon, NJ 07508	6,820
*Bellemead Devel Co., 1099 Wall St. W., Lyndhurst, NJ 07071	215,490
Belmont-Winograd, 880 Bergen Avenue, Jersey City, NJ 07306	12,215
Mr. Mayer Winograd, 880 Bergen Avenue, Jersey City, NJ 07306	15,537
Benedectine Mother House, 851 N. Broad St., Elizabeth, NJ 07208	37,618
*Bensall Rlty., Co., 45 Church St., Paterson, NJ 07505	50,844
Mr. Donald S. Kates, 47 Orient Way, Rutherford, NJ 07070	16,174
Bergen Investments Inc., P.O. Box 747, Teaneck, NJ 07666	25,608
Bergen Point Brass, 179 W. 5th St., Bayonne, NJ 07002	17,767
Grove St. Apts, 20 N. Maple Ave., Irvington, NJ 07111	85,442
Ricalda Rlty. Co., 30 Jabez St., Newark, NJ 07105	11,994
Bernsol Realty Co., 744 Broad St., Newark, NJ 07102	30,329
Ascher Teich, 970 Coolidge Rd., Elizabeth, NJ 07208	7,048
Best Dyeing Finishing Co., 140 Spring St., Murrary Hill, NJ 07971	29,999
Stanley Blackman Labs, 130 Wesley St., S. Hackensack, NJ 07606	7,702
The Black Prince Dist., 691 Clifton Ave., Clifton, NJ 07011	87,163
Mediterranean Twrs., 2100 Linwood Ave., Ft. Lee, NJ 07024	160,711
*Wm. Meltzer, 605 Riverside Dr., Hillside, NJ 07205	28,647
*Capitol Mgt. Corp., Executive Plaza Suite 300, 10 Parsonage Rd., Edison, NJ 08817	88,924
*Meridan Develop Co., 1750 Oaktree Road, Iselin, NJ 08830	3,700
Merritt Gardens Apts., 10 Knickerbockers Rd., Dumont, NJ 07628	47,326
Merten Bros. Florist, 25 Floral Ave., Newark, NJ 07114	10,945
Blair House-Cranston Corp., 225 Millburn Avenue, Millburn, NJ 07041	37,641
Blanda & Amlicki, c/o M.G. Amlicke, 39 The Circle, Passaic, NJ 07055	17,595
*Mr. Donald McKay, 360 Lexington Ave., New York, NY 10017	44,553
*Bofors Steel Co., 1075 Edward St., Linden, NJ 07036	14,207
Bogen Communications Div., P.O. Box 500, Paramus, NJ 07652	39,019
*Boonton Molding Co. Pl. #1, 300 Myrtle Ave., Boonton, NJ 07005	81,992

Name and address of firm	Volume purchased (in gallons)
*Frontenac Apts., 280 N. Central Ave., Hartsdale, NY 10530	55,906
*Walter & Frank Frykberg, 164 So. Harrision St., East Orange, NJ 07017	20,357
H.B. Fuller Co., 59 Brunswick Ave., Edison, NJ 08817	33,357
Fulton Towers, 106 So. Harrision St., E. Orange, NJ 07018	56,296
*Furniture Clearance Inc., 1100 Morris Ave., Union, NJ 07083	15,497
Furniture Dst. America, 224 E. Rt. 4, Paramus, NJ 07652	3,678
Maybrook Plaza Apts., P.O. Box 798, Maywood, NJ 07607	67,641
Estate of Dr. Conti, c/o Garden State National Bank, 170 Main St., Hackensack, NJ 07661	14,767
Mayflower Apts., P.O. Box 747, Piscataway, NJ 08854	48,180
*Frieman Realty Co., 1969 Morris Ave., Union, NJ 07083	23,104
*Mayflower Gdns. Corp., c/o Frieman Realty Co., 1969 Morris Ave., Union, NJ 07083	22,211
Fidelity Bond-Mtg. Co., Property Mgmt. Dept., S E Cor 17 St. and Walnut, Philadelphia, PA 19102	54,545
Mead-wilbert Co., 28 Burgess Pl., Wayne, NJ 07470	13,600
Albert Brockie, Mgr., 144 S. Harrision Ave., E. Orange, NJ 07018	16,397
Mediterranean Towers-West, 2100 Linwood Ave., Fort Lee, NY 07024	180,531
Mediterranean Towers-South, 2100 Linwood Ave., Fort Lee, NJ 07024	174,503
Boro.-Annex-Fairfield, Boro. of Fairfield, NJ, 230 Fairfield Rd., Fairfield, NJ 07007	11,041
*Bower St. Assoc., P.O. Box 367, Linden, NJ 07036	7,236
*Wamber Realty—Greenberg Agy., 908 18th Ave., Newark, NJ 07106	51,285
*Castle Products Co., 487-501 Lyons Ave., Irvington, NJ 07111	29,186
*120 Randolph Co., Inc., c/o Kohn Mahack & Nolke, 22 Bank St., Summit, NJ 07902	39,538
Grove Assoc., 197 Rutgers La., Parsippany, NJ 07054	107,378
Cedar Lane Gdns., Inc., P.O. Box 747, Teaneck, NJ 07666	19,336
National Cold Storage, 215 Coles St., Jersey City, NJ 07302	50,935
National Hose Co., P.O. Box 151, Dover, NJ 07801	68,602
National Standard Co., Athenia Div., 714-716 Clifton Ave., Clifton, NJ 07015	106,726
National Starch & Chem Corp., 225 Bellevilie Ave., Bloomfield, NJ 7003	113,633
National Warehouse Ind., 22 1234 Paterson Plank Rd., Secaucus, NJ 07094	25,473
R. Neumann Co., 300 Observer Hi Way, Hoboken, NJ 07030	92,041
New Age Mirror & Tile, Ind. Inc., 37 Empire St., Newark, NJ 07114	11,294
New Amsterdam Village, 1 Van Delft Dr. Rental Office, S. Amboy, NJ 08879	200,674
5 Holding Co., 297 S. 21st St., Irvington, NJ 07111	23,333
Reel Strong Fuel Oil Co., 3 North Ave. East, Cranford, NJ 07016	11,777
WGK Realty Co., c/o Wm. Spitalny, 23 Wingate Dr., Livingston, NJ 07039	24,572
*Frank H. Taylor & Sons, 23 S. Harrison St., E. Orange, NJ 07018	23,095
*44 S. Munn Apts., P.O. Box 567, West Paterson, NJ 07424	90,891
*47 Elm St. Associates, P.O. Box 175, Florham Park, NJ 07932	10,744
434 Lincoln Ave. Associates, 116 Main St., Orange, NJ 07050	21,775
Herbert Goldberg Realtors, Box 62, S. Orange, NJ 07079	17,899
FHA-C/O P.J. Inganamort, Mgmt. Co., 515 Mt. Prospect Ave., Apt. 1G, Newark, NJ 07207	10,914
Brounell & Kramer Mgmt., 1435 Morris Ave., Union, NJ 07083	8,086
Mr. Max Rothstein, 410 Riverside Dr., New York, NJ 10025	17,621
*5907 Blvd. East Corp., c/o Frieman Realty Co., 1969 Morris Ave., Union, NJ 07083	45,967
Manufacturers Village, 356 Glenwood Ave., E. Orange, NJ 07017	37,137
Mr. Max Kessel, 20 Willett St., Bergenfield, NJ 07621	3,136
Maple Gardens, c/o Mr. F. Schonholtz, 60 Park Place, Newark, NJ 07102	15,051
*Newman-Frank Realty, 2540 Rt. 22, Union, NJ 07083	13,948
Maplewood Plaza, Box 62, E. Orange, NJ 07079	52,091
Marc Assoc. Inc., P.O. Box 89, Matawan, NJ 07747	52,389
*Martin Motor Oil Co., 520 Collins Ave., Hasbrouck Heights, NJ 07604	40,478
Marist High School, 1241 Kennedy Blvd., Bayonne, NJ 07002	47,847
*Markay Bags, 15 E. 32nd St., New York, NY 10016	29,272
Market High Assoc., 19 Sunset Terrace, Maplewood, NJ 07040	14,014
*Joseph Markovitz Inc., 1115 Broadway, New York, NY 10010	108,922
Grove West Grand Rlty, 188 Wilder St., Hillside, NJ 07205	17,497
Housing Auth of Plainfield, 510 E Front St., Plainfield, NJ 07060	53,953
Kors-Ostrow, 880 Bergen Ave., Jersey City, NJ 07306	24,977
*Empire Realty, 400 Park Ave., New York, NY 10022	10,000
Thomas M. Graham Co., 217 Prospect Ave., Cranford, NJ 07011	57,426
*N. Hoffman-Entpse, 640 Anderson Ave., Cliffside Park, NJ 07010	3,670
Equitable Bag Co., P.O. Box 1388, Long Island City, NY 11101	8,770
Mr. Sam Lipman, 1020 Park Ave., New York, NY 10028	19,150
Essex Chair Co., Box 314, Union, NJ 07083	23,475
Essex County College, 31 Clinton St., Newark, NJ	37,263
Essex Housing, 20 N. Maple Ave., Irvington, NJ 07111	45,818
Essex Passaic Rlty, 681 Main Ave., Belleville, NJ 07109	11,765
Essex Paper Box Co., 281-297 Astor St., Newark, NJ 07114	16,714
Rockvell Realty Co., 1640 Vauxhall Rd., Union, NJ 07083	14,657
Mr. Leo Tzeses, 343 Cumberland Rd., So. Orange, NJ 07079	20,047
Mr. Isadore Attinger, P.O. Box 309, N. Brunswick, NJ 08903	7,529
Executive House, Box 43, Livingston, NJ 07039	7,725
Mr. Karl Theurer, 517 Brook Ave., Hillsdale, NJ 07642	9,960
Readington Assoc., 3800 Hadley Rd., S. Plainfield, NJ 07080	25,430
*Equity Assoc., 158 Linwood Plaza, Fort Lee, NJ 07024	16,700
*Bienfang Paper Co., Inc., 125 Jackson Ave., Edison, NJ 08817	44,526
Bigelow Sanford Inc., Box 3089, Greenville, SC 29602	76,818
*Bishop Electric, Div Sola Basic Inc., 10 Canfield Rd., Cedar Grove, NJ 07009	16,750
Harry & Arnold Black, 274 Central Ave., Newark, NJ 07103	13,242
F&E Realty Co., c/o Goldberg, Box 62, So. Orange, NJ 07079	92,825
*FHA M. Krone Assoc., 1510 Corliss Ave., Neptune, NJ 07753	79,169
Mr. J. Reibel, 645 Wyoming Ave., Elizabeth, NJ 07208	8,019
A.W. Faber Castell Corp., 41 Dickerson St., Newark, NJ 07103	56,456
Faber Cement Block Co., Inc., P.O. Box 225, Paramus, NJ 07652	61,652
Fabian Theatre, 45 Church St., Paterson, NJ 07501	24,462
Omnia Properties Inc., #1, 30 Broad St., New York, NY 10004	146,622
Fairleigh Apts., 20 Willet St., Bergenfield, NJ 07621	27,525
The Fairmount, 585 Newark Ave., Elizabeth, NJ 07201	45,918
T.A. Farrell Planting Co., 39 Atlantic St., Garfield, NJ 07026	14,257
Feldman Light Fixtures, 610 E 32nd St., Paterson, NJ 07513	14,332
Fern Towers, 1135 Clifton Ave., Clifton, NJ 07013	72,741
Meadow Builders J.V., 145 A. Jerome St., Roselle Park, NJ 07204	18,548
Fine Organics Inc., 205 Main St., Lodi, NJ 07644	89,682
First Congreg Church, S. Fullerton Ply St., Montclair, NJ 07042	34,850
Fisher Scientific Co., 52 Fadem St., Springfield, NJ 07081	33,647
*G.M. Papastamatis, 49 Driftwood Dr., Sayreville, NJ 08859	8,448
Food Concentrates Inc., P.O. Box 1014, Rahway, NJ 07065	60,435
L. Schlesinger, 41 Bowden St., Maplewood, NJ 07040	39,860
Hersig Rlty Co., 325 Grafton Ave., Newark, NJ 07104	137,024
*C.H. Forsman Co., Inc., 20-01 Pollitt Drive, Fairlawn, NJ 07410	21,653
Fort Lee Corp., P.O. Box 747, Teaneck, NJ 08840	17,350
Franco Mfg., Co., Inc., High St., Metuchen, NJ 08840	29,254
Forest Hills Properties, 342 Madison Ave., New York, NY 10017	594,696
Franklin Gardens, 155 Riverside Dr., New York, NY 10024	82,756
*Marlborough Hotel, 89 N. Arlington Ave., E. Orange, NJ 07017	12,594
Marriott Motor Hotel, Rt. 80, Saddle Brook, NJ 08559	98,373
Marriott Hot Shoppes, Hangar Dr. Airport Bldg. 95, Newark, NJ 07114	69,995
Marshall Warehouse Co., 200 Greene St., Teterboro, NJ 07608	8,192
Martha Bell Corp., Mr. Adam Reibel, 3 Ramsgate Rd. Cranford, NJ 07016	17,599
Mar Vreeland Assoc., 375 Broadway, Paterson, NJ 07501	16,591
Mr. M. Albert, 58 Raymond Ave., S. Orange, NJ 07079	27,545
525 Realty Holding Co., 11 Sloan St., S. Orange, NJ 07079	62,571
The Matheson Co., Inc., P.O. Box 85, E. Rutherford, NJ 07083	105,023
Jas. H. Matthews Co., Inc., 1151 Bloodfield Ave., Clifton, NJ 07012	9,569
Maxine Shops, 1027 Stuyvesant Ave., Union, NJ 07083	1,360
*Brady Marine Repair Co., 900 Jefferson St., Hoboken, NJ 07030	10,956
Branch Brook Manor, 216A Branch Brook Drive, Belleville, NJ 07109	216,894
Briarcliff Village Apts., P.O. Box 745, Piscataway, NJ 08854	33,277
Briar Hall Apts., P.O. Box 422, Rutherford, NJ 07070	25,189
*Capitol Mgmt. Corp., Executive Plaza, Suite 300, 10 Parsonage Rd., Edison, NJ 08817	51,659
Broadway Gover Realty Co., 258 Main Ave., Passaic, NJ 07055	30,609
Fisher Stevens Inc., 120 Brighton Rd., Clifton, NJ 07012	20,075
*The Flintkote Co., 480 Central Ave., E. Rutherford, NJ 07073	133,653
Allison Mgmt. Corp., 1750-20 Hillside Ave., Jamaica, NY 11438	36,713
Metal Powder Chem. Works, 701 Spring St., Elizabeth, NJ 07201	39,231
Metalwash Mach. Co., 901 North Ave., Elizabeth, NJ 07201	52,078
Metuchen Manor, 77 Milltown Rd., E. Brunwick, NY 08816	54,051
Midland Ross Corp., Machinery Div., Box 791, N. Brunswick, NJ 08903	76,739
*Rosko Phil Inc., 3 Stanford Ct., W. Orange, NJ 07052	19,538
Monroe Mgmt. Co., 55 Monroe Place, Bloomfield, NJ 07003	23,466
*CH Tatelbaum, TR, 801 1st National Bank, Baltimore, MD 21202	14,656
Montclair Academy, Lloyd Rd., Montclair, NJ 07047	38,267
Dr. Walter T. Darden, 266 Orange Rd., Montclair, NJ 07042	15,038
Kruvant Bros., 71 Valley St., S. Orange, NJ 07079	27,986
Montclair Midland Realty, 180 Walnut St., Montclair, NJ 07042	35,364
Mr. Howard Zindel, 52 Harmon Rd., Edison, NJ 08817	19,996
J. Morecraft, 27 E. 35th St., Bayonne, NJ 07002	8,249
Mother's Div. Vita Food Prod., 80 Ave. K, Newark, NJ 07105	57,983

Name and address of firm	Volume purchased (in gallons)
*Motorco Inc., 89 Terminal Ave., Clark, NJ 07056	6,040
Mountainview Gdn. Apts., 1640 Vauxhall Rd., Union, NJ 07083	28,352
Mt. Calvary Homes, 244 Chadwick Ave., Newark, NJ 07108	56,195
*Brookview Terrace Apts., 303 Plainfield Ave., Edison, NJ 08817	13,336
*641 E. Realty Co., 115 Frelinghuysen Ave., Newark, NJ 07004	27,755
Leonard Associates, P.O. Box 1411, 1 Hartz Way, Secaucus, NJ 07094	91,594
Brynwood Gdns., Box 37, Parlin, NJ 08859	82,441
*Button Corp. of America, 49 Dickerson St., Newark, NJ 07103	71,383
Mr. F.H. Miller, 116 Prospect St., E. Orange, NJ 07017	62,285
Seven Haven Realty Co., P.O. Box 651, Bloomfield, NJ 07003	231,784
Mt. Saint Andrew Villa, W. 55 Midland Ave., Paramus, NJ 07652	34,231
Mulberry Metal Prod., P.O. Box 443, Union, NJ 07083	17,700
*Associated Realty Co., 8500 River Rd., N. Bergen, NJ 07047	18,916
Jo Munch, 339 New Providence Rd., Mountainside, NJ 07092	7,713
Murphy Door Bed Co., Inc., 40 E. 34th St., New York, NY 10016	5,218
Murray Hill Apts., 185 Valley St., S. Orange, NJ 07079	68,811
*C & S Enterprises, 117 Chestnut St., Roselle, NJ 07203	24,409
*First Essex Corp., 2185 Lemoine Ave., Suite 1-E, Fort Lee, NJ 07024	76,005
*Raymond T. Marzuli Co., 336 Broad St., Bloomfield, NJ 07003	14,789
Bender Realty Inc., 197 Rutgers Lane, Parsippany, NJ 07054	32,884
Milton Flamm, 49 Woodmere Ln., Tenafly, NJ 07670	15,803
Mr. Roy Weltchek, 27 Prince St., Elizabeth, NJ 07208	56,514
95 Mgmt. Co. P.O. Box 442, Teaneck, NJ 07666	43,568
96N. Walnut St. Co. Mgmt., Box 442, Teaneck, NJ 07666	21,139
Henry M. Lesher Agy., 561 Northfield Rd., E. Orange, NJ 07052	10,638
Mrs. S. Caverino, 48 Bonn Pl., Weehawken, NJ 07087	10,729
912 S. Ave. Corp., 912 S. Ave., Plainfield, NJ 07062	15,698
*N L Industries Inc., 195 Clinton Rd., W. Caldwell, NJ 07006	30,579
*Garden Motor Lodge, 83 Broadway, E. Paterson, NJ 07407	21,031
*Garden State Mtg. & Fin. Co., 780 Frelinghuysen Ave., Newark, NJ 07114	37,557
Garden State Plaza Corp., Rt. 4 & Central Plnt., Paramus, NJ 07652	299,286
Canterbury At Arlington Inc., 39 4th St., N. Arlington, NJ 07032	59,938
*Mr. Joel Sondak, 17 Academy St., Newark NJ 07102	27,165
*Peter F. Pasjerg Co., Inc., 18 Beaver St., Newark, NJ 07102	23,741
Broadway Manor Corp., 153 Franklin St., Bloomfield, NJ 07003	24,200
*Terrace Rlty Co., c/o Mr. L. Bernstein, 1064 Clinton Ave., Irvington, NJ 07111	16,266
*Feist & Feist, 58 Park Place, Newark, NJ 07102	18,952
Free Public Library, 11 So. Broad St., Elizabeth, NJ	20,855
*GCC Co., Box 236, Livingston, NJ 07039	11,363
*General Motors Corp., 780 Dowd Ave., Elizabeth, NJ 07207	35,330
*G & O Assoc., P.O. Box 253, Roselle, NJ 07203	18,346
Galaxy Chemical Corp., P.O. Box 443 River St., Paterson, NJ 07524	21,373
Galler 7-Up Bottling Co., 88 Polifly Rd., Hackensack, NJ 07601	55,053
Gallo Seed & Pet Supplies, P.O. Box 113, E. Rutherford, NJ 07073	18,237
*P.F. Pasbjerg Co., Inc., 18 Beaver St., Newark, NJ 07102	23,975
Midland Ross Corp., 530 W. Mt. Pleasant Ave., Livingston, NJ 07039	24,196
Midtown Hi Way Laundry, 306 Bergen Blvd., Fairview, NJ 07022	7,963
George A. Milton Can Co., 580 Division St., Elizabeth, NJ 07021	25,825
Modern Plastic Mach. Inc., 64 Lakeview Ave., Clifton, NJ 07011	65,886
Monasco Industries, 57 Lyon St., Amstrom, NJ 12010	6,644
Moldcast Mfg. Co., 164 Delancy St., Newark, NJ 07105	56,290
Monroe Mgmt. Co., 55 Monroe Pl., Bloomfield, NJ 07003	42,747
Brookdale Apts., 20 N. Maple Ave., Irvington, NJ 07111	187,318
Mr. J.A. Davidson, 383 Park St., Upper Montclair, NJ 07043	5,927
*Brooklawn Gdns. Inc., 2013 Morris Ave., Union, NJ 07083	192,849
Adco, 1480 Route 46, Parsippany, NJ 07054	25,576
Mr. P. Perone, Supt., 500 Main St., Chatam, NJ 07928	18,265
Garden Homes Agency, 1640 Vauxhall Rd., Union, NJ 07083	16,271
Garfield Mfg. Co., 10 Midland Ave., Wallington, NJ 07055	31,933
Garry Holding Co., 1620 Manhattan Ave., Union City, NJ 07087	20,283
Garry Mfg. Co., 1010 Jersey Ave., New Brunswick, NJ 08901	18,339
Geerling's Greenhouses, 497 William St., Piscataway, NJ 08854	56,357
Genal Co., Box 214, Hasbrouch Hgts, NJ 07604	39,928
General Color Co., 24 Ave. B, Newark, NJ 07114	29,945
*General Diaper of N.J. Inc., 823 North Ave., Plainfield, NJ 07060	8,156
*General Electric Co., 116 Washington St., Bloomfield, NJ 07003	23,403
General Export Clothing Corp., 323 Cortlandt St., Belleville, NJ 07109	22,042
*General Footwear, 210 Orchard St., E. Rutherford, NJ 07073	23,361
Norpak Corp., 70 Blanchard St., Newark, NJ 07105	19,288
Newark Star Ledger, Star Ledger Plaza, Newark, NJ 07601	76,736
Cedar Wright Gdns. Inc., 342 Madison Ave., New York, NY 10017	335,674
Cellofilm Corp., Box 25, Woodbridge, NJ 07075	17,375
Center Lumber Co., 85 Fulton St., Paterson, NJ 07501	29,469
Central Bergen YMCA, 160 Main St., Hackensack, NJ 07601	44,726
Central Evergreen, 576 Central Ave., E. Orange, NJ 07018	9,619
Central Glass Dist., 651 Lehigh Ave., Union, NJ 07083	38,794
*Central Service Corp. Ldry., 646 Frelinghuysen Ave., Newark, NJ 07114	248,440
M.H. Rubin Sons, Box 817 Somerville, NJ 08876	17,003
Mrs. O'Neill, 92 Elizabeth St., River Edge, NJ 07661	35,052
General Green Village, 37 Mountain Ave., Springfield, NJ 07081	71,311
Chanel Inc., 876 Centennial Ave., Piscataway, NJ 08854	35,972
Chateau Apartments, P.O. Box 422, Rutherford, NJ 07070	23,776
Dweck Rlty Co., 85 Market St., Newark, NJ 07102	14,716
Chatham Ward Co., P.O. Box 54, Mendham, NJ 07945	18,355
*Chester Parlavecchio, 276 Vermont Ave., Irvington, NJ 07111	6,063
Brouneil Kramer Mgt. Co., 1435 Morris Ave., Union, NJ 07083	29,055
Cherry Park Arms Inc., Box 214, Millburn, NJ 07041	18,324
Cherry Pine Apts., Mr. A. Reibel, 3 Ramsgate Rd., Cranford, NJ 07016	33,459
*Chestnut Willow Apts. c/o Liv Kelly, 33 Evergreen Place, E. Orange, NJ 07018	36,900
*Childhood Interest Inc., 180 Westfield Ave., Roselle Park, NJ 07204	31,739
Jersey Mtg. Co., 430 Westfield Ave., Elizabeth, NJ 07207	60,667
Meadow Bldrs. J.V., 145 A. Jerome St., Roselle Park, NJ 07204	13,133
Chilton Towers, Box 43, Livingston, NJ 07039	80,827
Chock Full O Nuts, 425 Lexington Ave., New York NY 10017	19,827
Church Twrs. UR, P.O. Box M-82, Hoboken, NJ 07030	138,796
Claraco, c/o Mr. Rothman, 460 Olisco Dr., Westfield, NJ 07080	14,605
David Cronheim Co., 1186 Raymond Blvd., Newark, NJ 07102	124,956
Robert Silverman, 28 N. Baums Court, Livingston, NJ 07039	16,341
Clark Bowling Lanes, 140 Central Ave., Clark, NJ 07066	4,694
Clark Door Co., Inc., 69 Myrtle St., Cranford, NJ 07016	13,643
Jacob Max, c/o Engasser, 716 15th St., Union City, NJ 07087	8,066
W.A. Cleary Corp., P.O. Box 10, Somerset, NJ 08873	28,147
*Mr. Harry Kadish, 377 So. Harrison St., East Orange, NJ 07018	19,207
Cliff House, 2205 N. Central Rd., Ft. Lee, NJ 07024	49,247
*Cliffwood Gdns. Assoc., 350 Cross Road, Matawan, NJ 07747	33,951
Cliffside Office Supply, P.O. Box 1087, So. Hackensack, NJ 07606	40,776
Mr. J. Bigel, 60 Park Pl., Newark, NJ 07102	77,460
Mr. W.L. Spitalny, 23 Wingate Dr., Livingston, NJ 07039	17,790
Clinton Court, c/o James Hanson MFGT, 400 State St., Hackensack, NJ 07601	8,964
Clinton House Co., 450-7th Ave., New York, NY 10001	25,287
Cloverleaf Gdns., 272A Roanoke St., Woodbridge, NJ 07094	140,773
*Coast Metals Co., 201 Redneck Ave., Little Ferry, JN 97643	7,786
Colannade Apts. Corp., 65 Clifton Blvd., Clifton, NJ 07015	12,534
*Cold Indian, Springs Inc., Box 218, Eatontown, NJ 07724	309,242
Colfax Manor Gardens, 1135 Clifton Ave., Suite 200, Clifton, NJ 07013	97,317
*Geral Laurence, 14 Elm St., Elizabeth, NJ 07208	18,852
College Twrs. Apt., 37 College Dr., Jersey City, NJ 07305	40,473
College Towers Apts., 37 College Dr., Jersey City, NJ 07305	132,463
*Colonial Container Corp., Vanderhoff Ave., Denville, NJ 07834	50,995
Mr. John Borea, 276 Cypress Ave., Bogota, NJ 07603	28,762
Colonial Heights Inc., Box 25., Parsippany, NJ 07054	186,524
Colonial Manor, Mr. John Apgar, 555 Main St., Chatham, NJ 07928	14,750
Americana Assoc., 1530 Palisade Ave., Fort Lee, NJ 07024	286,406
B. & K. Properties, 140 Hepburn Rd., Clifton, NJ 07012	111,035
Colony Furniture, 1125 West Elizabeth Ave., Linden, NJ 07036	30,568
Commerical Cor. Cont. Co., 615 Ferry St., Newark, NJ 07105	39,802
*Ernest Perimutter 3 Haran Circle, Millburn, NJ 07041	16,453
Constantine Village, 147 Vose Ave., South Orange, NJ 07079	30,276
Continental Coffee Co., 10 Empire Blvd., Moonachie, NJ 07074	27,398
Omnia Properties Inc., 30 Broad St., New York, NY 10004	140,636
Continential Pack Corp., 555 N. Michigan Ave., Kenilworth, NY 07033	56,608
Continental Plastics, 10 Production Way, Avenel, NJ 07001	117,851
Cooper Laboratories Inc., Fairfield Rd., Wayne, NJ 07470	61,729
Corona Plastic Inc., Rt. 53, Danville, NJ 07834	10,202
Cosmair Inc., 220 Terminal Ave., Clark, NJ 07066	109,971
Cott Bottling Co. of N.J., 535 Dowd Ave., Elizabeth, NJ 07202	25,000
Country Club Pd. Camb., 1640 Vauxhall Rd., Union, NJ 07083	22,569
B. & K. Realty Country Club, 140 Hepburn Rd., Clifton, NJ 07012	148,168
Cranford Meth. Church, 201 Lincoln Ave., Cranford, NJ 07016	8,944
Cranford Towers, Mr. Ernest Winter, P.O. Box 810, Mamaronack, NY 10543	26,873
Harwill Homes Inc., 1640 Vauxhall Rd., Union, NY 07083	53,130

Name and address of firm	Volume purchased (in gallons)
Crosley Terrace, c/o Punia & Marx, 16 Court St., Brooklyn, NY 11241	50,475
Ashley Goodman-Apt. 27A, 1221 Magie Ave., Union, NJ 07083	21,854
Ashley Goodman-Apt. 17A, 1221 Magie Ave., Union NJ 07083	7,613
Governor Morris Inn, 2 Whippany Rd., Morristown, NJ 07960	64,233
*Grand Bellevue Apts., Box 691, Union, NJ 07083	12,562
Grand Furniture, 59 Market St., Newark, NJ 07102	11,694
Grand Lawn Assts., Box 747 Teaneck, NJ 07666	21,102
Grand Lee Apts., 33-06 Fairlawn Ave., Fairlawn, NJ 07410	48,539
Mr. Richard Selznick, 34 Manchester Dr., Westfield, NJ 07090	6,243
*The Boyle Co., Mrs. Walsh, 1143 E. Jersey St., Elizabeth, NJ 07201	13,651
*Grandview Grdns.-3, M.D. Assts., 1808 Springfield Ave., Maplewood, NJ 07040	24,013
*M.D. Assts., 1808 Springfield Ave., Maplewood, NJ 07040	15,602
*Carl Spears, Abbington Dr., Apt. B-1, Hightstown, NJ 08520	31,790
Mr. Leon Sigall, 135 W. 30th St., New York, NY 10001	22,759
Wills Oil Co., Rt. 206, Netcong, NJ 07857	26,759
General Rubber Co., 9 Empire Blvd., S. Hackensack, NJ 07606	38,070
Melber Operating Co., c/o Mr. M. Berlow, 972 Broad St., Newark, NJ 07102	28,112
Georgian Gdns., 71 Valley St., S. Orange, NJ 07079	28,399
Georgia Bonded Fibers, 15 Nuttman St., Newark, NJ 07103	36,128
Gibson Associates Inc., 90 Myrtle St., Cranford, NJ 07016	28,983
Anmar Realty Co., Boright Ave., Kenilworth, NJ 07033	12,480
Gilton Mfg. Co., 99 Fifth Ave., Paterson, NJ 07524	45,037
M. Glasgall Silk Co., E. Weiner, 24 Rockingham Pl., Glen Rock, NJ 07452	28,786
*Parnes Bros., 200 W. 5th St., Rm. 402, New York, NY 10019	11,604
Glenwood Apts., 55 Glenwood Ave., E. Orange, NJ 07017	77,343
Ashley Goodman, 1221 Magie Ave., Union, NJ 07083	10,546
*Greenwood Gdns., 2013 Morris Ave., Union, NJ 07083	30,008
D. Cronheim Rec., 1186 Raymond Blvd., Newark, NJ 07112	149,475
Mr. Joe Bigel, 60 Park Place, Newark, NJ 07102	28,276
Grey Realty Co., 921 Bergen Ave., Jersey City, NJ 07306	13,140
Guardian Sprinkler Co., 965 W. Grand St., Elizabeth, NJ 07202	5,001
Edward Guttmann & Son, Realty Co., 729 Glenwood Ave., Teaneck, NJ 07666	32,399
H.H. Provision Co., 62 Berry St., Somerset, NJ 08873	17,802
Mr. Philip Mandelbaum, 17 Academy St., Newark, NJ 07102	2,928
Chas. J. Rocco Enterprises, 450C Essex St., Hackensack, NJ 07602	58,499
Halsey Grdns., 185 Valley St., S. Orange, NJ 07079	15,924
*Capitol Mgmt. Corp., Executive Plaza, Suite 300, 10 Parsonage Rd., Edison, NJ 08817	22,449
Gummersell Prop., 383 Park Ave., Montclair, NJ 07043	13,893
Hamilton Laundry—Dry Cleaning, 276 Hamilton St., Rahway, NJ 07065	34,524
*Hamiltonian Apts., c/o Mr. J. Frieman, 1969 Morris Ave., Union, NJ 07083	61,816
First Real Est. Invest. of NJ, c/o S. Hekemian Sons, 477 Main St., Hackensack, NJ 07601	34,244
J.L. Hammett Co., 2393 Vauxhall Rd., Union, NJ 07083	43,100
Mr. Milton Coleman, 61 MacArthur Dr., Clifton, NJ 07013	17,554
*Mr. Sanford Field, 1010 Clifton Ave., Clifton, NJ 07013	11,992
Noel Homes, 1640 Vauxhall Rd., Union, NJ 07083	44,320
Sherman Park Inc., 710 Westfield Ave., Elizabeth, NJ 07208	7,328
*Samuel Geltman & Co., 1435 10th St., Fort Lee, NJ 07024	43,001
Harmor Plastics Div., APL Corp., 505 Manor Ave., Harrison, NJ 07029	169,304
Harrison Essex Realty, 681 Main St., Bldg. 43, Belleville, NJ 07109	27,704
243 S. Harrison St. Corp., Box 447, Fort Lee, NJ 07024	35,751
Hart Products, 207 Van Vorst St., Jersey City, NJ 07302	37,059
Hartz Mountain Corp., 700 S. Fourth St., Harrison, NJ 07029	67,941
Hastings Gdns., Box 422, Rutherford, NJ 07070	121,346
*Hellring Bros. Inc., 420 North Ave. E., Cranford, NJ 07016	3,717
Hencar Holding Corp., 30 62nd St., West New York, NJ 07093	13,635
Wm. Henry Co., Templer Div., Whitehead Ave., S. River, NJ 08882	56,336
Mobit Inc., 116 Main St., Orange, NJ 07050	34,139
Hewitt Robins Inc., 270 Passaic Ave., Passaic, NJ 07055	90,684
*Cottage Arms Co., Dr. F. Weisbrod, 61 S. Munn Ave., E. Orange, NJ 07018	18,885
Crown Life Corp., 155 Riverside Dr., New York, NY 10024	25,044
*Cypress Gardens, 2013 Morris Ave., Union, NJ 07083	105,168
Riverview Assoc., 155 N. Ean St., Englewood, NJ 07631	50,647
River West Apts., P.O. Box 422, Rutherford, NJ 07070	19,579
Rober Towers, 1135 Clifton Ave., Suite 200, Clifton, NJ 07013	63,183
Julius Roehrs Co., Rt. #33, Farmingdale, NJ 07727	139,131
H.D. Epstein, 504 Bloomfield Ave., Verona, NJ 07044	33,627
*Mr. Carl Rohner, RD #1, Denver, PA 17517	15,671
Rolane Maint. Co., 1043 E. 8th St., Brooklyn, NY 11230	109,404
Dr. F. Lapeyroleria, 114 High St., Montclair, NJ 07104	13,606
*Ronther, Inc., Rt. #46, Little Falls, NJ 07424	24,648
Union Theatre, 990 Stuyvesant Ave., Union, NJ 07083	6,689
A.J. Realty, J. Braverman, 91 Chatham Terrace, Clifton, NJ 07013	13,126
David Urman, 724 Beechwood Rd., Linden, NJ 07036	8,948
Valley Nursing Home, Old Hook Rd., Westwood, NJ 07675	26,279
Verona Lake Apts., 39 Lakeview Ave., Verona, NJ 07044	12,408
*Vestal Development Co., 1439 N. Broad St., Hillside, NJ 07205	58,768
Village Apts., Ashley Goodman—Apt. 27A, 1221 Magie Ave., Union, NJ 07083	64,176
Vornado Exp. Act. Pay, 174 Passaic St., Garfield, NJ 07026	50,232
Redmond Rlty Mgt. Co., 147 Vose Ave., S. Orange, NJ 07079	15,317
Atlantic Steamer Supply Co., 1100 Adam St., Hoboken, NJ 07030	37,290
Atlantic Tool Die Co., 3461 S. Clinton Ave., Plainfield, NJ 07063	12,095
*Branson Equip. Co., 51 Terminal Rd., Clark, NJ 07066	13,485
*Costa Development Corp., S10 Rt. 17, Paramus, NJ 07652	293,256
Brookchester Sec. 3, 854 River Rd., New Milford, NJ 07646	120,407
J.J. Brunett Const. Co., 200 Rt. #9, Old Bridge, NJ 08857	541,147
*Buffeys & Sons, 91 B'way, Jersey City, NJ 07306	4,801
Royal Gardens II, 968 Stuyvesant Ave., Union, NJ 07083	45,978
Ronel Gdns.-O'Neill, 92 Eliz. St., River Edge, NJ 07661	11,767
*Roman Products Corp., Phillips Ave., So. Hackensack, NJ 07606	95,155
St. Vincents Church, 26 Green Village Rd., Madison, NJ 07940	9,645
Plaza Corp., 560 Sylvan Ave., Englewood Cliffs, NJ 07638	64,983
Sealed Air Corp., 19-01 Rt. 208, Fairlawn, NJ 07401	28,082
Sears Roebuck Co., 3196 Kennedy Blvd., Union City, NJ 07087	31,354
Sears Roebuck & Co., 436 Main St., Hackensack, NJ 07601	14,516
Sector Realty, 117 Sylvan Ave., Newark, NJ 07104	6,111
Anchor Concrete Products, 975 Burnt Tavern Rd., Bricktown, NJ 08723	22,229
Aspen Industrial Co., 2 Aspen St., Passaic, NJ 07055	7,973
All Star Dairies Inc., P.O. Box 1250, Perth Amboy, NJ 08862	33,301
*Adams Tanning Co., 126 South St., Newark, NJ 07114	14,672
*Ava Mgt. Co., 2190 Center Ave., Ft. Lee, NJ 07024	8,554
Beecham Prod. Div. Beecham, 65 Industrial So., Clifton, NJ 07012	32,041
Mr. Mayer Winogard, 880 Bergen Ave., Jersey City, NJ 07306	21,311
*Belmont Greeting Card, 195 Allwood Rd., Clifton, NJ 07012	14,196
*Blum Bindery, 1405 N. Board St., Hillside, NJ 07205	20,154
Bogert & Carlough Co., 509 Straight St., Paterson, NJ 07503	19,802
*Booton Molding Co., Pl. #2-3, 300 Myrtle Ave., Boonton, NJ 07005	34,242
Burns & Roe Inc., 700 Kinderkamack Rd., Oradell, NJ 07649	23,806
*Calver Knit Corp., 357 County Rd., Secaucus, NJ 07094	13,235
James V. Cascio, 109 Aldene Rd., Roselle, NJ 07200	50,425
Chemical Prod., Corp., 125 Main Ave., East Paterson, NJ 07407	10,166
Clarkwood Service Corp., 690 Union Blvd., Totowa, NJ 07512, Attn: Karl Venedikt	23,357
*Coca Cola Bott., Co. N.Y., 425 E. 34th St., New York, NY 10016	44,798
Commercial Trust Co., 15 Exchange Pl., Jersey City, NJ 07302	6,825
Continental Apts. Inc., 2375 Hudson Ter., Ft. Lee, NJ 07024	7,830
*Cook Machinery Co., Inc., 380 Pleasantview Ave., Hackensack, NJ 07661	45,231
Riverview Gardens, 1 Garden Terr., N. Arlington, NJ 07032	186,470
Royal Gardens #1, 968 Stuyvesant Ave., P.O. Box 471, Union, NJ 07083	89,951
Pines Apts. Mr. Adam Reibel, 3 Ramsgate Rd., Cranford, NJ 07016	11,006
Pinefield Manor, Box 25, Parsippany, NJ 07054	43,394
Mr. Murray Pantirer, 644 Salem Ave. Elizabeth, NJ 07208	38,189
Harold M. Pitman Co., 515 Secaucus Rd., Secaucus, NJ 07094	19,075
*Rose Associates, P.O. Box 175, Florham Park, NJ 07932	24,682
Rego Const. Co., 416 63rd St., West New York, NJ 07093	30,318
Leonard Feinen, 320 Lincoln Ave., Hasbrouck Heights, NJ 07604	34,988
Plateau Gardens, 1241 Anderson Ave., Ft. Lee, NJ 07024	62,442
Robert Schneider, 19 Sunset Terrace, Maplewood, NJ 07040	2,201
Piscataway Assoc., 80 Huguenot Ave., Englewood, NJ 07631	450,358
Polyplastex United Inc., 870 Springfield Rd., Union, NJ 07083	50,805
J.S. Popper, 200 Liberty St., Little Ferry, NJ 07643	31,512
Potdevin Machine Co., 200 North St., Teterboro, NJ 07608	32,787
*Precast Products Co., 190 Rt. 206 South, Somerville, NJ 08876	39,360
*Precision Lighting Inc., 1285 Central Ave., Hillside, NJ 07205	27,678
*T.C. McGee Rec., 634 Rivervale Rd., Rivervale, NJ 07675	13,831
Prentice Hall Inc., Route 9W, Englewood Cliffs, NJ 07632	142,881
*1615 Park Ave., Corp., c/o Sylvan Cooper, 400 Deal Lake Dr., Asbury Park, NJ 07712	31,910
Prime Auto Parts, 13-21 Montogomery St., Hillside, NJ 07205	8,357
*Peter F. Pasbjerg Co., 18 Beaver St., Newark, NJ 07102	23,765
*Prospect Equities Inc., 209 Prospect St., East Organe, NJ 07017	43,644
Paled Realty Co., Inc., c/o Galgano, 80 Claredon Place, Hackensack, NJ 07601	37,028

Name and address of firm	Volume purchased (in gallons)
Prospect Point Gardens, 2 Prospect Place, Matawan, NJ 07747	17,458
Prudent Mgt. Realty, c/o Edward Sosnow, 28 Bailey Rd., Milburn, NJ 07041	9,905
*Public Service Elec. & Gas, 722 Ferry St., Newark, NJ 07105	9,286
Public Warehouse Corp., 555 Main St., Belleville, NJ 07109	53,525
*Puerto Rican Forwarding Co., 2121—91st. St., North Bergen, NJ 07047	27,938
*Quaker Cats Co., P.O. Box 176, New Brunswick, NJ 08902	84,050
Baker Village, 34 Cornell St., West Orange, NJ 07052	63,479
Clayton Holding Co., 11 Sloan St., South Orange, NJ 07079	74,565
Mr. M. Shalita, 50 Court St., Brooklyn, NY 11201	33,122
R & L Realty Co., Stern & Dubrow, 76 So. Orange Ave., South Orange, NJ 07079	48,697
Rab Associates, 73 Parker Ave., Maplewood, NJ 07040	11,481
Rahway Joint Venture, 350 Warren St., Jersey City, NJ 07302	74,052
Raman Associates, 73 Parker Ave., Maplewood, NJ 07040	34,157
Randolph Village, 197 Rutgers Lane, Parsippey, NJ 07054	34,319
*Rapid Boiler Co. of N.J., Fadem-Diamond Rd., Springfield, NJ 07081	45,312
Raven Hill Associates, P.O. Box 747, Teaneck, NJ 07666	46,482
Raytheon Co., 141 Spring St., Lexington, MA 02178	22,975
*Hugh M. Leonard-Rec., 275 Thomas St., Newark, NJ 07114	18,977
Reformed Church Home, 720 Nye Ave., Irvington, NJ 07111	21,001
Suburban Estates, P.O. Box 2127, Ocean, NJ 07712	4,999
*Regent Uniform Rental, 237 N. 12th St., Newark, NJ 07007	30,041
The Reginal Corp., 313 Regina Ave., Rahway, NJ 07065	112,963
Rego Const. Corp., 416–63rd St., West New York, NJ 07093	10,823
Reheis Chem. Armour Phar., 235 Snyder Ave., Berkeley Heights, NJ 07922	136,383
*Reiter Schneider Connor, 619 Jackson St., Hoboken, NJ 07030	30,401
*Remington Rand Systems, P.O. Box 28, Cranford, NJ 07016	14,694
*Rexnord Inc. Specialty, Fasterns Div., 22 Spring St., Paramus, NJ 07652	14,214
Mr. Robert Dinerman, 4620 W. Commercial Blvd., Ste. 3, Tamarac, FL 33319	27,634
Mr. J. Ratner, 342 Madison Ave., New York, NY 10027	107,664
C.J. Rocco Enterprises, 450C Essex St., Hackensack, NJ 07602	25,184
River Drive Apt., 380–400 River Dr., Passaic, NJ 07055	8,247
River Heights Inc., P.O. Box 1371, Highland Park, NJ 08904	130,727
*Est. of Charles Shilowitz, 26 Journal Sq., Jersey City, NJ 07306	48,091
Mr. Albert Foschini, 466 Burton Ave., Hasbrouck Hgts., NJ 07602	6,583
*Riverside Terrace, Inc., c/o Mr. A.C. Wolf, Jr., 10 East End Ave., New York, NY	25,690
Riverview Gardens, 1 Garden Terrace, North Arlington, NJ 07032	137,809
Placid, Inc., 5 Colt St., Paterson, NJ	21,525
Pan Rotary Corp., 45 Hartmann Ave., Garfield, NJ 07206	3,085
Pepsi Cola-Metro Bot., 1007 Livingston Ave., No. Brunswick, NJ 08902	16,941
*T.C. McGee Rec., 634 Rivervale Rd., Rivervale, NJ 07675	29,415
D. Gelber-Prestige Prop., 53 Main St., Hackensack, NJ 07601	6,802
*Anber Realty Co., 272 Sussex Ave., Newark, NJ 07107	74,915
Franklin Estates Inc., 1640 Vauxhall Rd., Union, NJ 07083	6,567
Wood Plaza Theatre, 400 No., Wood Ave., Box 174, Linden, NJ	13,098
Radice Realty Const. Co., 30 Glen St., White Plains, NY 10603	14,075
Oxford Penda Flex Corp., Clinton Road, Garden City, L.I., NY 11530	37,960

Name and address of firm	Volume purchased (in gallons)
Dr. Frank Lapeyrolerie, 114 High St., Montclair, NJ 07042	12,650
Mr. F. Schnoholtz, 60 Park Place, Newark, NJ 07102	67,293
Rabbinacal College, 226 Sussex Ave., Morris Township, NJ 07960	49,437
Robert Silverman, 28 N. Baums Ct., Livingston, NJ 07039	16,151
Kent Realty Co., 90 Livingston Ave., New Brunswick, NJ 08902	6,252
Repak Corp., 113 No. 13th St., Newark, NJ 07107	21,107
Lehigh Const. Co., 300 South Ave., Garwood, NJ 07207	40,459
Rhodes Plastic Corp., 1075 Edwards St., Linden, NJ 07036	24,948
Wesley, Winter & Moore, 1026 W. Elizabeth Ave., Linden, NJ 07036	15,409
*Westcourt Apts., Box 162, Kearny, NJ 07032	18,888
*West End Apts. Inc., 2013 Morris Ave., Union, NJ 07083	49,704
Housing Auth. of Plainfield, 510 E. Front St., Plainfield, NJ 07060	91,935
Westbound Homes Inc., 1640 Vauxhall Rd., Union, NJ 07083	45,314
West Mill Gdns. Inc., 1640 Vauxhall Rd., Union, NJ 07083	287,075
Westmount Country Club, Rifle Camp Rd., W. Paterson, NJ 07425	5,617
Mr. P. Mandelbaum, 17 Academy St., Newark, NJ 07102	15,862
Society African Missions, 23 Bliss Ave., Tenafly, NJ 07670	8,697
Solar Compounds Co., 1201 W. Blanche St., Linden, NJ 07036	140,318
Solvents Rec. Ser. of NJ, Sylvan St., Linden, NJ 07036	214,192
*Rosko Phil, 3 Stanford St., W. Orange, NJ 07052	16,797
Kruvant Brcs., 71 Valley St., S. Orange, NJ 07079	31,001
*Spartell Realty Co., Box 108, Glen Ridge, NJ 07028	12,447
Stephanie Gdns., Richard Plotkin, 17 Oak Ave., W. Orange, NJ 07052	12,267
Mr. H. Diamond, 595 Union Blvd., Totowa, NJ 07512	10,008
*Sperry Hutchinson Co., Rt. 27 & Vineyard Rd., Metuchen, NJ 08840	82,392
Spiral Binding Co., Inc., 2 Bridewell Pl., Clifton, NJ 07014	12,301
*Romile Co., E. 210 Route #4, Paramus, NJ 07652	26,988
Springview Gdns., 37 Mountain Ave., Springfield, NJ 07081	30,117
Standard Overall, 50–56 Woolsey St., Irvington, NJ 07111	105,407
*Stanley Theatre, 2932 Blvd., Jersey City, NJ 07306	38,938
*Starbrook Apts., Box 224, Englewood, NJ 07631	12,096
Star Poultry Inc., 191 Gould Ave., Paterson, NJ 07503	9,226
*Stauffer Chem. Co., 2 Paulison Ave., Passaic, NJ 07055	138,307
Wm. Steinnen Mfg. Co., 29 E. Halsey Rd., Parsippany, NJ 07054	25,977
Mr. Henry H. Bassford, Jr., 158 Douglass Rd., Emerson Hill, Staten Island, NY	10,259
Stern Bros., Accounts Pay., C&C Bldg., S. 60 Rt. 17, Paramus, NJ 07652	71,270
*Steven Realty Co., 3 Stanford Ct., W. Orange, NJ 07052	19,540
Robert Silverman, 28 N. Baums Court, Livingston, NJ 07039	11,831
Stexon Realty Co., 15 Wilkenson Ave., Jersey City, NJ 07305	24,753
Steven Holding Corp., 1000 Park Ave., New York, NY 10028	24,118
Rental Invest. Prop. Inc., Box 163, Elizabeth, NJ 07207	9,532
*Strathmore House Realty, Box 422, Perth Amboy, NJ 08862	26,604
Stuyvesant Manor, 20 N. Maple Ave., Irvington, NJ 07111	323,141
Stuyvesant Town, 20 N. Maple Ave., Irvington, NJ 07111	202,237
Stuyvesant Village Inc., 20 N. Maple Ave. Irvington, NJ 07111	131,061
Albert H. Stiers Inc., 1051 Bloomfield Ave., Clifton, NJ 07012	144,104

Name and address of firm	Volume purchased (in gallons)
Suburban Court, 500 Main St., Chatham, NJ 07928	14,720
Suburban Laundry, 22 Temple Ave., Hackensack, NJ 07601	5,001
Audi No Inc., 645 Main St., Hackensack, NJ 07601	14,451
Mr. Hyman Zeik, 106 W. 8th St., Bayonne, NJ 07002	27,168
*Peter F. Pasjerg Realty & Ins. Co., 18 Beaver St., Newark, NJ 07102	29,842
*Summit Realty Co., 9060 Palisade Ave., N. Bergen, NJ 07047	75,776
Frank Schoenholz, 60 Park Place, Newark, NJ 07102	43,061
Tzeses Bros. Inc., 343 Cumberland Rd., S. Orange, NJ 07079	21,285
Sunnyfield Gdns., 343 Academy Terrace, Linden, NJ 07036	51,752
Sunny Lane Farms, Box 314, 471 Union Ave., Murray Hill, NJ 07974	29,046
Sunset Gdns.-Schoenholtz, 60 Park Place, Newark, NJ 07102	42,192
Sunny Towers Inc., 235 S. Harrisons St., E. Orange, NJ 07018	19,934
Supreme Laundry Supply, 124 Delancey St., Newark, NJ 07105	48,242
Elmwood Terr. Inc., Surry Manor, 155 Riverside Dr., New York, NY 10024	204,479
Mr. Wm. Moke, 22 Bank St., Summit, NJ 07901	15,950
Swan Motel, U.S. Highway 1, Linden, NJ 07036	16,690
Sycamore Terrace Apts., 968 Stuyvesant Ave., Union, NJ 07083	20,980
*Carl Spears, 500 S. Center St., Orange, NJ 07050	19,547
1082 Broad St. Assoc., c/o Kruvant, 71 Valley St., S. Orange, NJ 07079	7,691
Sutton Apts., 2375 Hudson Terrace, Fort Lee, NJ 07024	26,986
Supermarkets General Co., Acct. Pay. Non-Merchandise, Box B, Woodbridge, NJ 07095	28,414
*Suburban Prime Foods, 1053 Raymond Blvd., Newark, NJ 07102	8,540
Huffman & Boyle Co., State Hwy. #4, N. Hackensack, NJ 07661	4,398
Hartz Mountain Corp., 700 S. 4th St., Harrison, NJ 07029	335,040
*Stauffer Chem. Co., 800 Montrose Ave., S. Plainfield, NJ 07060	16,304
*Star Graphic Systems Inc., E. Wesley & S. Main St., S. Hackensack, NJ 07606	32,294
Standard Tool Mfg. Co., 738 Schuyler Ave., Lyndhurst, NJ 07071	50,662
*Spiral Binding Equip. Div., 858 Summit Ave., Newark, NJ 07104	9,272
*Morris Rubinfeld, 1715 Caton Ave., Brooklyn, NY 11226	5,811
Mr. Frank Schoenholtz, 60 Park Place, Newark, NJ 07102	28,417
Mr. David Gelber, Atty., 55 Main St., Hackensack, NJ 07601	21,654
Washington Dodd Apts., Levin Sagner, 336 Caroll St., Orange, NJ 07079	86,459
Kruvant Bros., 71 Valley St., S. Orange, NJ 07079	57,508
R.D. Serr Co., Box 322, Short Hills, NJ 07078	17,044
Freant Realty Co., Inc., c/o Broadway Fruit, 109 Broadway, Passaic, NJ 07055	9,775
Omnia Prop. Inc., 30 Broad St., Newark, NY 10004	63,870
Wella Corp., 524 Grand Ave., Englewood, NJ 07631	10,518
Westfield Pine Apts., Box 68, Parsippany, NJ 07054	6,037
Oldwood Corp., c/o T. Yet Pang, 961 Mountain Ave., Mountainside, NJ 07092	4,400
West Park Apts., 33–06 Fairlawn Ave., Fairlawn, NJ 07410	26,028
*Washington Park U.R. Corp., 576 5th Ave., New York, NY 10036	127,051
*Wheeling Transport Inc., 1235 Central Ave., Hillside, NJ 07205	8,416
James & Lucille White, 104 N. 17th St., E. Orange, NJ 07017	7,670
Mrs. J. Sessa, 12 Brookwood Drive, Maplewood, NJ 07040	10,873
Willette Corp., Joyce Kilmer Ave., N. Brunswick, NJ 08901	3,546
R.D. Serr Co., Box 322, Short Hills, NJ 07078	20,846
*Rudolph Strom, 521 Fisk Avenue, Brielle, NJ 08730	6,703

Name and address of firm	Volume purchased (in gallons)
*Wilson Sporting Goods, 60 Paige Rd., Clifton, NJ 07012	14,038
*A.R. Winarick Inc., 100 Jersey Ave., New Brunswick, NJ 08901	85,037
Witco Chemical Co., Inc., 100 Bauer Dr., Oakland, NJ 07436	15,233
*Bine-George Realty Co., c/o Mr. Jack Friedman, 1969 Morris Avenue, Union, NJ 07083	30,826
Jarc Realty Co., 299 Broadway, New York, NY 10007	170,576
Bishop Invest. Trust, 216 Tremont St., Boston, MA 02116	32,638
Mr. Philip Mandelbaum, 17 Academy St., Newark, NJ 07102	532
*Frieman Realty Co., 1969 Morris Ave., Union, NJ 07083	108,585
Hancock House, 1435 Morris Ave., Union, NJ 07083	37,724
*Valanjoy Realty Co., 431 Park Ave., Orange, NJ 07052	5,000
Harcord Mfg. Co. 125 Monitor St., Jersey City, NJ 07304	57,072
Chock Full of Nuts, 425 Lexington Ave., New York, NY 10017	13,984
Hartz Mountain Corp., 700 S. Fourth St., Harrison, NJ 07029	110,686
Hawthorne Realty Co., 39 Ave. C., Bayonne, NJ 07002	57,120
Hewlett-Packard Inc. 120 Century Rd., Paramus, NJ 07652	20,301
Haxacon Electric Co., 161 W. Clay Ave., Roselle Park, NJ 07204	8,836
Hewitt Robins, Inc. Passaic, NJ 07055	29,933
*Bell Associates, Box 62, S. Orange, NJ 07079	27,329
*R.B.H. Assoc., 955 Lafayette Ave., Hawthorne, NJ 07507	22,369
Hilltop Nursing Home, Hook Mt. Rd., Pinebrook, NJ 07058	22,426
*Holiner Leather Prod., 945 Julia St., Elizabeth, NJ 07201	9,100
Holy Name Rectory 99 Marsellus Ave., Garfield, NJ 07026	6,686
Home News Publishing Co., 123 How Lane, New Brunswick, NJ 08902	26,059
*Hospital Equipment Co., 215 Central Ave., Newark, NJ 07013	14,025
Hotel New Tremont, 16-18 Fulton *St., Newark, NJ 07102	22,271
Hotel Plaza, 91 Sip Ave., Jersey City, NJ 07306	16,203
Housing Auth. Carteret, E. Dolan Homes, Bergen St., Carteret, NJ 07008	67,261
Hudson Terrace Assoc., 2339 Hudson Ter., Fort Lee, NJ 07024	97,920
Huffman Koos Co., 50 Rt. 46, Totowa, NJ 07512	7,420
Huffman Koos Co., Rt. 50 #46, Totowa, NJ 07512	11,794
*Brunswick Mgmt. Corp., 2550 Kingston Rd., York, PA 17402	120,670
Verona Div. Bachem, Iorio Court, Union, NJ 07083	8,760
S.S. Voorheas Sons, 1775 Burnett Ave., Union, NJ 07083	47,457
*J.H. Delaney, 19 Franklin Terr., S. Orange, NJ 07079	11,515
Gretchum Grant Kitchen, 200 Rutgers Ave., Maplewood, NJ 07040	11,867
Dunroven Nursing Home, 211 County Rd., Cresskill, NJ 07626	22,003
Dura Electric Lamp Co., 64 E. Bigelow St., Newark, NJ 07114	16,656
Drawad Inc., Box 8—Twn Ctr. Br., W. Orange, NJ 07052	6,000
Dillan Assoc., 180 Madison Ave., New York, NY 10016	30,068
Extruded Products Corp., Box 62, New Road, Madison, CT 06443	15,071
Brounell-Kramer Mgmt., 1435 Morris Ave., Union, NJ 07083	4,176
Harold Simon Esq., 272 N. Broad St., Elizabeth, NJ 07208	10,224
*Edgcomb Steel Alum. Corp., 460 Hillside Ave., Hillside, NJ 07205	51,903
Eastern Union Co. YW H. Assn., Green Lane Cor. Magee Ave., Union, NJ 07083	31,197
*EBS Data Process Ctr., 600 Passaic Ave., W. Caldwell, NJ 07006	8,418
Flexicote Processing Co., 614 River Rd., Delawanna, NJ 07014	23,631
Robert Ginsberg, 24 Commerce St., Newark, NJ 07102	19,104
*Park Towers Apts. Inc., Box 185, Bayonne, NJ 07002	21,369
Peerless Bindery, 60 West St., Bloomfield, NJ 07003	31,920
J.C. Penny Co., Sayre Woods Shop Center, Parlin, NJ 08859	19,500
Perma Foam, 605 E. 21st St., Irvington, NJ 07111	13,448
*P.J. Inganamort Mgt. Corp., 601 Bergen Mall, Paramus, NJ 07652	23,478
Evans Aristocrat Inc., 700 Frelinghuysen Ave., Newark, NJ 07114	56,429
Mr. Sam Lipman, 1020 Park Ave., New York, NY 10028	28,790
Essex Court Gardens, 342 Madison Ave., New York, NY 10017	73,267
*Essex Catholic High School, 300 Broadway, Newark, NJ 07104	45,892
Edison Housing Auth., J.C. Engel Gardens, Willard Dunham Dr., Edison, NJ	48,308
Emkay Realty Corp., 1000 Park Ave., New York, NY 10028	8,381
*Elizabeth-Elm Inc., 1155 W. Chestnut St., Union, NJ 07308	11,572
Wyckoff Steel Co., 720 Frelinghuysen Ave., Newark, NJ 07114	117,687
Wyckoff Steel Co., 722 Frelinghuysen Ave., Newark, NJ 07114	
X.L. Rlty Co., 384 Trenton Ave., Paterson, NJ 07503	24,421
YMCA Madison Area, 1 Ralph Stoddard Dr., Madison, NJ 07940	22,674
YMCA-YWCA Joint Mgt., 112 Oak St., Ridgewood, NJ 07450	25,264
YM-YHA of Essex Co., 760 Northfield Ave., W. Orange, NJ 07052	58,882
YMHA, 2 S. Adelaide Ave., Highland Pk, NJ 08904	13,553
Mr. J. Ratner, 342 Madison Ave., New York, NY 10017	54,948
Yantacaw Schoenholz, 60 Park Pl., Newark, NJ 07102	45,648
*Yardley of Loridon, 700 Union Blvd., Totowa, NJ 07512	29,897
*Yavneh Academy, 413-12th Ave., Paterson, NJ 07514	12,730
*Yeast Products Inc., 455-5th Ave., Paterson, NJ 07514	30,168
Falstrom Co., Inc., Box 188, Passaic, NJ 07055	48,656
Allison Mgmt. Corp., 175-20 Hillside Ave., Jamaica, NY 11432	50,703
Falcon Apts. Inc., 270 Prospect St., E. Orange, NJ 07018	37,663
Omnia Properties Inc., 30 Broad St., New York, NY 10004	55,894
Grobet Fils Co. of America, Washington Ave., Carlstadt, NJ 07072	5,930
Greenville Hospital, 1825 Blvd., Jersey City, NJ 07305	28,217
Mr. Albert Foschini, 466 Burton Ave., Hasbrouck Heights, NJ 07602	24,984
*Goldsmith Bros., 670 Dell Rd., Carlstadt, NJ 07972	36,151
Gerbert Metal Supply, 40-50 Montgomery St., Hillside, NJ 07205	12,375
Gerrling Greenhouses, 496 William St., Piscataway, NJ 08854	73,509
Mrs. B. Johnson, 151 E. Palisade Ave., Englewood, NJ 07631	1,405
Wigton Abbot Corp., 1225 S. Ave., Plainfield, NJ 07061	34,371
Stephanie Gdns., Richard Riotkin, 17 Oak Ave., W. Orange, NJ 07052	12,267
C.J. Rocco Enter, 450C Essex St., Hackensack, NJ 07602	34,435
Ralph Carletta Enter, Inc., 450C Essex St., Hackensack, NJ 070602	203,071
Ridge View Apt. Inc., 132 Ridge Rd., No. Arlington, NJ 07032	16,822
Jos. J. Brunetti Consti. Co., 200 Rt. #9, Old Bridge, NJ 08857	137,460
J.J. Brunetti Const. Co., 854 River Rd., New Milford, NJ 07646	126,585
D. Pavlosky Rec., 528 N. Brunswick Ave., Fords, NJ 08863	12,779
Mrs. Stephanie Cevorino, 48 Boon Pl., Weehawken, NJ 07087	29,416
Pan Rotary Corp., 45 Hartmann Ave., Garfield, NJ 07206	12,474
Panta Sote Prod., 250 Hamburg Turnpike, Butler, NJ 07405	36,853
David Friebaur, 663 Main St., Passaic, NJ 07050	19,645
Park East Apts., 55 Mountain Blvd., Warren, NJ 07060	31,571
*Valley Fair Ent., 15 Jackson Rd., Totowa, NJ 07513	79,764
Yeshiva Hudson City, 2501 New York Ave., Union City, NJ 07087	9,393
Weinstein Steiner Co., P.O. Box 214, Hasbrouck Hts., NJ 07604	15,230
*Young Mens Ch. Assoc., 9 Livingston Ave., New Brunswick, NJ 08901	29,214
Mr. David Zeliff, 2025 S. 17th St., Pampano Beach, FL	7,475
Shelton Mfg. Co., 591 Ferry St., Newark, NJ 07105	17,102
*Skyview Apts., 2013 Morris Ave., Union, NJ 07083	12,346
J.K. Smit Sons Inc., 571 Central Ave., Murray Hill, NJ 07971	28,335
31 Trinity Assoc., c/o S. Muroff, 18 Thurston Dr., Livingston, NJ 07039	10,958
Plaza Corp., 560 Sylvan Ave., Englewood Cliffs, NJ 07932	108,984
*B. Levine, 67 Speir Dr., S. Orange, NJ 07079	14,701
*Frieman Realty Co., 1969 Morris Ave., Union, NJ 07093	23,460
*333 Fairmount Rlty, c/o Frieman Rlty, 1969 Morris Ave., Union, NJ 07083	30,577
1062 Broad St. Assoc., c/o Kruvant, 71 Valley St., S. Orange, NJ 07079	6,337
T.L.S. Realty Co., c/o Jerry Silverman, 530 Seventh Ave., New York, NY 10018	6,451
Jarc Rlty Co., 299 Bway. New York, NY 10007	98,126
Trinity Mgt. Co., 57 W. So. Orange Ave., So. Orange, NJ 07079	53,545
*Terrance Gardens, Main Investments Co., New Brunswick, NJ 08903	13,735
*Terri Giri Inc., 1501 Bloomfield St., Hoboken, NJ 07030	13,520
Mr. Leonard Feinen, 320 Lincoln Ave., Hasbrouck Hgts., NJ 07604	36,469
Reel Stron Fuel Co., 3 North Ave., Cranford, NJ 07018	36,035
*United Community Fund, 45 Branford Pl., Newark, NJ 07102	13,571
United Veil Dye Finish, 29-50 Bostwick Ave., Jersey City, NJ 07305	69,795
*Mr. Jos. Iarussi, 1165 Evergreen Dr., Bridgewater, NJ 08876	8,820
Inglemoor Nursing Home, 311 Livingston Ave., Livingston, NJ 07039	26,570
Pastroy Assoc., 85 Central Ave., Clifton, NJ 07011	23,069
L. Risack-JC Realty, 100 Stonebill Rd., Springfield, NJ 07081	8,832
Benjamin Jacobs, 330 W. Jersey St., Apt. 6H, Elizabeth, NJ 07202	18,921
Amelia Jasieniecki, 11 Park Pl., Bloomfield, NJ 07003	14,483
Jersey Mtg. Co., 430 Westfield Ave., Elizabeth, NJ 07207	18,922
Jewish Community Center, 1051 Boulevard, Bayonne, NJ 07002	16,367
*Kriso's Elictric Plating Co., 11 Paterson Ave., Wallington, NJ 07055	20,274
*Jacques Kreisler Mfg., 9015 Bergenline Ave., N. Bergen, NJ 07070	79,401
Knollcroft Gdns., c/o Charles Gorovy, 33-06 Fairlawn Ave., Fairlawn, NJ 07410	74,541
Ketchum Jersey Div., South Ave. W. Lincoln, Cranford, NJ 07016	45,210
Kesril Assoc., 40 Warren St., Paterson, NJ 07524	42,000
* Max Kass Trust, 1290 6th Ave., Suite 1344, New York, NY 10019	30,576
Kaysam Corp. of Amer., 27 Kentucky Ave., Paterson, NJ 07502	96,988
Kaiser Alum-Chem. Sales, 200 Rt. #22, Hillside, NJ 07205	30,675
Rose Manor, 1640 Vauxhall Rd., Union, NJ 07083	257,361
*White Cap Preserves, 34 De Forest Ave., E. Hanover, NJ 07936	24,997
Whitestone Const. Co., 1640 Vauxhall Rd., Union, NJ 07083	74,303
Whittredge Gardens Inc., 216 Tremont St., Boston, MA 02116	28,590
Wiggins Plastics Inc., 180 Kingsland Rd., Clifton, NJ 07013	49,356

Name and address of firm	Volume purchased (in gallons)
Wilds Baking Co. Inc., 214 S. Dean St., Englewood, NJ 07631	6,242
Wilkata Fold Box, 300 Hoyt St., Kearny, NJ 07032	18,631
Fay Mac Corp., 20 Willett St., Bergenfield NJ 07621	12,304
Parnes Bros., 200 W. 57th St., New York, NK 10019	33,063
Willow Holding Co., 297 S. 21st St., Irvington, NJ 07111	17,477
Mr. Nicholas Martini, 663 Main Ave., Passaic, NJ 07055	22,193
Brounell & Kramer Apt., 1435 Morris Ave., Union, NJ 07083	29,052
Winbrock Rlty Co., c/o Jaffee Spindler Co., 111-1st St., Jersey City, NJ 07302	52,599
*Windsor Hotel, 171 Broadway, Jersey City, NJ 07306	12,752
Wilson R. Kaplan, 80 Huguenot Ave., Englewood, NJ 07631	30,669
Macam Co., 20 Willet St., Bergenfield, NJ 07621	20,008
*Wonder Cont. Corp., Kingsland Schuyler Aves., Lyndhurst, NJ 07071	42,693
*Woodmere At Eatontown, P.O. Box 218, Eatontown, NJ 07724	51,317
*Woodward Plastics Corp., 557 Lehigh Ave., Union, NJ 07083	16,569
*Barba Rlty Investments, 159 Main Ave., Chatham, NJ 07928	73,242
Mr. F. Schonholtz, 60 Park Place, Newark, NJ 07102	97,319
Hilltop Estates, 272 Roanoke St., Woodbridge, NJ 07095	116,812
Hilltop Manor, 272A Roanoke St., Woodridge, NJ 07095	71,452
*Lowe Mgmt. Co., 44 Glenwood Ave. E. Orange, NJ 07017	14,861
Hi Way Concrete Prod. Corp., 147 5th St., Saddle Brook, NJ 07662	30,332
Hoffman La Roche, Kingsland Road, Nutley, NJ 07110	17,743
Hamilton House Invest Co., Box 306, S. Orange, NJ 07079	20,127
*J. I Holcomb Mfg., 210 S. Newman St., S. Hackensack, NJ 07601	30,647
Holsey Auto Sales, 2395 Blvd., Jersey City, NJ 07304	13,049
Stanley Jojnowski, 365 Undercliff Ave., Edgewater, NJ 07020	20,228
Knoxley Realty Co., 4-42 St. Francis St., Newark, NJ 07105	24,522
Hotel Carlton, 22 E. Park St., Newark, NJ 07102	28,037
*Feist & Feist, 58 Park Place, Newark, NJ 07102	11,400
Hotel Plaza, 91 Sip Ave., Jersey City, NJ 07306	67,688
Newark Star Ledger, Star Ledger Plaza, Newark, NJ 07601	24,126
New England Village, 105 New England Ave., Summit, NJ 07901	97,078
New Jersey Bell Telephone Co., 315 Park Ave., Linden, NJ 07036	9,226
New Jersey Bell Telephone Co., 923 Rahway Ave., Union, NJ 07083	14,364
New Jersey Bell Telephone Co., 18 Paterson St., New Brunswick, NJ 08901	14,926
N.J. Tanning Co., Inc., 410 Frelinghuysen Ave., Newark, NJ 07114	39,977
Norpak Corp., 70 Blanchard St., Newark, NJ 07105	11,764
New Providence Gardens, 185 Valley St., South Orange, NJ 07079	85,719
*New Quality Laundry Service, 205 Liberty Ave., Jersey City, NJ	21,864
New Yorker Peters Corp., 805 Grand St., Elizabeth, NJ 07201	9,950
Norpak Corp., 70 Blanchard St., Newark, NJ	11,163
*Norris Industries, P.O. Box 2750, Newark, NJ 07114	37,660
*Norris Industries, P.O. Box 2750, Newark, NJ 07114	90,972
North Arlington Lyndhurst Joint Meeting, 214 Ridge Road, No. Arlington, NJ 07032	5,424
No. Broad Manor-Eliz., 21 Bleeker St., Millburn, NJ 07041	13,000
Brounell & Kramer, 1435 Morris Ave., Union, NJ 07083	45,328
Ace Const. Co., 60 Far Brook Dr., Short Hills, NJ 07078	22,171
Edison Housing Auth., J.C. Engel Gardens, Edison, NJ 08817	70,783
North Salem Terrace Apts., 644 Salem Ave., Elizabeth, NJ 07208	14,675
Mr. G. Goldschmidt, 737 W. 177th Street, New York, NJ 10033	11,885
North Village Apts., 911 Village Dr. E., No. Brunswick, NJ 08902	202,353
*Mr. J. H. Rosensaft, 58 Park Place, Newark, NJ 07102	13,906
Mr. J. Ratner, 342 Madison Ave., New York, NY 10017	37,401
*Nycal Co. Inc., 700 Washington Ave., Carlstadt, NJ 07072	5,467
*Mr. I. Robert Scheffrin, 663 Main Ave., Passaic, NJ 07055	21,804
103 No. Walnut St. Co., P.O. Box 442, Teaneck, NJ 07666	22,619
120 Grand Avenue Co., 574 West End Ave., New York, NY 10024	4,536
125 Prospect St., Corp., 125 Prospect St., E. Orange, NJ 07017	31,861
Mr. J. Shilowitz, 57 Highland Ave., Jersey City, NJ	19,801
141 Grand Ave., Co., 574 West End Ave., New York, NY 10024	2,901
*146 Manhattan Ave., Corp., c/o Frieman Realty Co., 1969 Morris Ave., Union, NJ 07083	15,402
*Martha Goodman, Box 367, Linden, NJ 07036	7,724
*Morris & Sons, 333-7th Ave., New York, NY 10001	11,102
Plaza Corp., 560 Sylvan Ave., Englewood Cliffs, NJ	20,660
176 Bergen Corp., 616 Kinderkamack Rd., River Edge, NJ 07660	10,212
*1009 Change Realty Co., 2810 Morris Ave., Union, NJ 07083	10,260
O.K. Towel & Uniform Supply Co., 65 Cherry St., Elizabeth, NJ 07202	67,872
Wilson R. Kaplan, 80 Huguenot Ave., Englewood, NJ 07631	45,246
O'Dowd Dairy, Rt. #46, Pinebrook, NJ 07058	43,172
Oliver Mfg. Supply Co., 730 Port Reading Ave., Port Reading, NJ 07065	55,826
Olympia Apts. Inc., Mr. Adam Reibel, 3 Ramsgate Rd., Cranford, NJ 07016	9,656
*Orbit Processing Corp., 1109 Grand Ave., No. Bergen, NJ 07047	39,462
Orchard Gardens Assoc., P.O. Box 341, Wellesley, MA 02181	141,946
Turkan Rlty-Omnia Prop., 30 Broad St., New York, NY 10004	39,821
Leopold Landau Mgt., Office, 529 W. Westfield Ave., Roselle Pk., NJ 07204	71,666
Rose Tree Gardens Inc., c/o Heller & Laiks, Esq., 77 Passaic Ave., Passaic, NJ 07055	38,068
*Ross Realty Co., 1 Horizon Rd., Fort Lee, NJ 07024	14,014
Ross St. Apt., 145 A Jerome St., Roselle Pk, NJ 07204	13,045
*Royal Apex Mfg. Co., 1355 W. Front St., Plainfield, NJ 07061	31,934
Brandino Entp. Inc., 97 Linden Ave., Elmwood Park, NJ 07407	26,011
*Sanford Silverman, 24 Commerce St., Newark, NJ 07102	19,973
Rutgers Builders, 197 Rutgers La., Parsippany, NJ 07054	116,692
Fabers Builders, 197 Rutgers Lane, Parsippany, NJ 07054	82,025
Rutherford Manor Apts., c/o Mr. S. Morganroth, 51 Chambers St., New York, NY 10007	62,741
*M. Winograd, 37 Emory St., Jersey City, NJ 07304	12,650
65 Summit Ave., Corp., 215 Englewood Ave., Englewood, NJ 07631	14,716
*David Tulchinsky, 177 Irvington Ave., S. Orange, NJ 07039	11,985
*Geo. J. Gannon Inc., 107 E. Mt. Plsnt Ave., Livingston, NJ 07039	54,096
76 Carnegie Ave. Corp., P.O. Box 302, Millburn, NJ 07041	12,639
775 No. Broad St. Co., 235 So. Harrison St., E. Orange, NJ 07018	37,700
*789 Realty Co., 3 Haran Place, Millburn, NJ 07041	11,205
*6701 Blvd. East Corp., 1969 Morris Ave., Union, NJ 07083	31,645
*SCM Corp., 5 Dean St., Englewood, NJ 07631	17,929
Mr. Ed Salz, 1108 Xlinton Ave., Irvington, NJ 07111	7,222
Safair Flying Service, Hgr. Airport 46, Teterboro, NJ 07608	7,019
*Safeco Ins. Group, 666 Kinderkamack Rd., River Edge, NJ 07761	26,398
Anbur Realty Co., 22 Hemlock Terr., Springfield, NJ 07081	56,517
Mr. Vidal Oetiz, 3 Salem Ave., Elizabeth, NJ 07208	59,504
Salvation Army Social Center, 248 Erie St., Jersey City, NJ 07302	33,171
*Samoset Laundry Service, 902 North Ave., Plainfield, NJ 07062	14,753
*Sanford Theatre, 1269 Springfield Ave., Irvington, NJ 07111	29,351
Sar Company, Box 43, Livingston, NJ 07039	16,743
Savoy Residence, 161 So. Park Dr., Woodbridge, NJ 07095	25,926
Mr. M. Scalera, 14 Rolling Hills Rd., Short Hills, NJ 07078	14,542
Howard Johnson Mtr., Clark, Central Ave., Clark, NJ 07066	20,940
Howell Electric Motors, Div. Howell International Inc., 900 North Ave., Plainfield, NJ 07062	91,962
Patrick H. Hu, 57 Kline Place, Berkeley Heights, NJ 07922	9,193
*Hud Cin Bldg., Prod., 700 North Ave. East, Westfield, NJ 07090	18,602
Park Court Inc., 80 Clarendon Place, Hackensack, NJ 07601	17,568
Hudson Towers, 7112 Blvd. E, N. Bergen, NJ 07047	71,386
S. Fiedler, 83-26 Lefferts Blvd., Kew Gdns., NJ 11415	13,182
Huffman Koos, 50 Rt. 46, Totowa, NJ 07512	13,642
Huguenot Apts., 80 Huguenot Ave., Englewood, NJ 07631	15,031
Hutton Lafayette Apts., 185 Valley St., S. Orange, NJ 07079	15,398
*Renee Lew Realty Agy., 125 Northfield Ave., W. Orange, NJ 07052	276,506
*Hymur Co., 60 Park Place, Newark, NJ 07102	16,316
Leo Brock Agt., 60 Park Pl., Newark, NJ 07102	17,810
The Palnut Co., Glen Road, Moutainside, NJ 07092	135,864
Panta Sote Products, 250 Hamburg Turnpike, Butler, NJ 07405	75,645
*Paradise Gardens, 1071 Springfield Ave., Irvington, NJ 07111	18,145
*Paramount Ind., 1711 So. Second St., Piscataway, NJ 08854	141,077
Parisian Towers, 333 Bergen Ave., Kearny, NJ 07032	9,902
*M.D. Aests., 1808 Springfield Ave., Maplewood, NJ 07040	34,563
Park Lake Village Apts., 350 Baldwin Rd., Parsippany, NJ 07054	101,379
Parnes Bros., 200 W. 57th St., New York, NY 10019	14,862
Cranston Corp., 225 Millburn Ave., Millburn, NJ 07041	50,037
*Mr. & Mrs. J. Comer, 828 Nancy Way, Westfield, NJ 07090	7,311
Walnut Associates, Box 1284, Union, NJ 07083	6,935
*Walworth Co., 400 S. 2nd Avenue, Harrison, NJ 07029	2,001
Warner Theater, 190 E. Ridgewood Avenue, Ridgewood, NJ 07450	16,570
Washington Dodd Apts., Levin Sagner, 336 Carroll St., Orange, NJ 07079	22,527
Town & Country Homes, 297 S. 21st St., Irvington, NJ 07111	32,442
*Private Realty Ser. Corp., 125 Northfield Rd., W. Orange, NJ 07052	26,442
Kay Realty Co., 290 Woodland St., Tenafly, NJ 07670	12,474
Wayne Village, 80 Hughuenot Ave., Englewood, NJ 07631	93,083
*Web Publications, 150 5th Ave., Hawthorne, NJ 07507	12,562
Wedgewood Apts., 1640 Vauxhall Rd., Union, NJ 07083	41,887
Elwin Inc., 514 Madison Ave., Plainfield, NJ 07060	7,616

Name and address of firm	Volume purchased (in gallons)
Weldon Roberts Rubber Co., 351 Sixth Ave., Newark, NJ 07107	38,624
The Wella Corp., 524 Grand Ave., Englewood, NJ 07631	60,759
Wesley Towers, 444 Mt. Prospect Ave., Newark, NJ 07104	57,000
Organon Inc., 375 Mt. Pleasant Ave., West Orange, NJ 07052	58,974
*Oritani Theatre, 300 Main St., Hackensack, NJ 08601	36,695
Our Lady of Good Counsel, 654 Summer Ave., Newark, NJ 07104	42,061
Our Lady of Mt. Virgin, 186 Mac Arthur Ave., Garfield, NJ 07026	12,618
Our Lady Queen of Peace, 400 Maywood Ave., Maywood, NJ 07607	13,700
Overlook Terrace Mgt. Co., 5601 Blvd. East, West New York, NJ 07093	260,223
Mr. Sam Lipman, 1020 Park Ave., New York, NY 10028	22,688
P.P.G. Realty Co., 58 Elmora Ave., Elizabeth, NJ 07202	17,864
*Packaging Media Inc., 354 Thomas St., Newark, NJ 07114	58,205
Paco Holding Corp., 25 Linden Ave. E. Jersey City, NJ 07305	15,002
*Padco Holding Corp., 440 Lincoln Blvd., Middlesex, NJ 8846	16,697
Paige Realty, c/o Arthur Brown, 3177 So. Ocean Dr., Hallandale, FL 33009	13,292
Leo Bruck Agt., 60 Park Pl., Newark, NJ 07102	22,684
*Harold Epstein Realty Co., 173 Essex Avenue, Rt. 27, Metuchen NJ 08840	26,002
Photo Lamp Itt Lamp, 133 Terminal Ave., Clark, NJ 07066	6,256
*ITT Rayonier Inc., S. Jefferson Rd., Whippany, NJ 07981	49,941
Imperial Container Co., 141 N. 13th St., Newark, NJ 07107	19,629
Friedman Mgmt. Co., 5 E. 86th St., New York, NY 10028	43,731
Mr. Albert Foschini, 75 Lodi St., Hackensack, NJ 07601	12,600
Mylod Feinberg, 345 Ampere Parkway, Bloomfield, NJ 07003	43,279
Inglemoor Inc., 333 Grand Ave., Englewood, NJ 07631	11,955
International Harvester, 525 Linden Ave. West, Linden, NJ 07036	15,017
*International Harvester Co., 191 Broadway, Jersey City, NJ 07306	11,525
International Paint Co., Morris & Elmwood Aves., Union, NJ 07083	56,006
International Vitamin Corp., 2530 Polk St., Union, NJ 07083	19,683
Partroy Assoc., 85 Central Ave., Clifton, NJ 07011	17,534
Partroy Associates Co., 85 Central Ave., Clifton 07011	17,870
Partroy Assoc., 85 Central Ave., Clifton, NJ 07011	13,379
*Inwood Knitting Mills, 1500 Main Ave., Clifton, NJ 07011	563,113
*Mr. J. Pasternak, Box 922, Clark, NJ 07066	29,030
J.B. Associates, 274 Central Ave., Newark, NJ 07100	15,955
Mr. J. Reibel, 645 Wyoming Ave., Elizabeth, NJ 07202	6,651
Renee Holding Corp., 365 Colt St., Irvington, NJ 07111	12,705
Jackson House, Box 242, Orange, NJ 07051	11,876
Japato Realty Co., Inc., 80 Clarendon Place, Hackensack, NJ 07601	22,943
James Phillip Co., Inc., E. 24th St. & McLean Blvd., Paterson, NJ 07514	14,462
James W. Higgins, 594 Penn Ave., Elizabeth, NJ 07201	8,268
Ernest Jarvis Co., 73 Empire St., Newark, NJ 07114	8,620
Jefferson Gdns., 155 Riverside Dr., New York, NY 10024	65,213
Jefferson House, Box 306, S. Orange, NJ 07079	30, 252
*Jefferson Screw Co., 720 Dowd Ave., Elizabeth, NJ 07201	22,600
*Jeronal Corp., 510 Belmont Ave., Haledon, NJ 07508	10,550
*Jersey National Liquor, 209 McLean Blvd., Paterson, NJ 07504	11,655
Jewish Community Center, Bergen & Belmont Ave., Jersey City, NJ 07304	29,476
P&C Realty Co., Inc., 24 Sheridan Ave., Clifton, NJ 07011	6,120
Johnson House—1, 709 Cedar Lane, Teaneck, NJ 07666	17,754
Johnson House—2, Real Estate Office, 709 Cedar Lane, Teaneck, NJ 07666	19,688
Robert A. Johnston Co., 4023 W. National Ave., Milwaukee, Wisconsin	50,559
*F.A. Lobatto, Michael Smith, 33 Evergreen Place, E. Orange, NJ 07017	17,374
*Mr. Sanford I. Feld, 28 Main St., W. Orange, NJ 07052	8,321
*Wachesberg Pickle Wks., Broadway & 12th St., Bayonne, NJ 07002	4,176
S.A. Wald Co., Inc., 39 Essex St., Jersey City, NJ 07302	9,202
*Walger Realty Co., c/o W. Patrich, Esq., 4808 Bergenline Ave., Union City, NJ 07087	21,419
Park Rest Inc., 912 South St., Plainfield, NJ 07060	26,666
*Parkview Assoc. of Millburn, 1804 Springfield Ave., Maplewood, NJ 07040	2,401
Park River Towers, 8800 Blvd. East, No. Bergen, NJ 07047	36,345
*Dr. Weisbrod—Park Royal, 61 So. Munn Ave., East Orange, NJ 07018	11,460
*Parkside Gardens, 2013 Morris Ave., Union NJ 07083	53,942
*Parkstone Apt. Inc., Box 638, Newark, NJ 07101	21,721
Mr. A. Weinstein, P.O. Box 214, Hasbrouck Heights, NJ 07604	47,957
Parktown House Apts., 11 Raritan Ave., Highland Park, NJ 08904	37,742
*Mr. David Krugman Agency, 1330 Main Ave., Clifton, NJ 07011	30,245
*Parkview Assoc.—Swersky, 744 Broad St., Newark, NJ 07102	21,696
*Sidney Newman Co., 33 W. Hawthorne Ave., Valley Stream, NY 11580	16,783
*Feist & Feist, 58 Park Pl., Newark, NJ 071012	51,344
Parnes Bros., 200 W. 57th St.—Room 1003, New York, NY 10019	31,047
Passaic Color Chem. Co., 28-36 Paterson St., Paterson, NJ 07501	13,514
Passaic Rubber Corp., 45 Derrest Dr., Wayne, NJ 07470	50,181
*Pastor Const. Co. Inc., 907 Studyvesant Ave., Irvington, NJ 07111	24,500
Paterson Bleachery Chem., 209 E. 15th St., Paterson, NJ 07524	101,840
*H. Patterson & Sons, 332 E. Main St., Bergenfield, NJ 07621	64,368
Pavilion Gardens, 6 Priscilla Lane, Englewood Cliffs, NJ 07632	6,401
Perfay Corp., 183 Monroe St., Passaic, NJ 07055	12,836
Mr. Sam Lipman, 1020 Park Ave., New York, NY 10028	25,659
Chas. Pfizer Co. Inc., 230 Brighton Rd., Clifton, NJ 07012	31,584
J.W. Pierson Co., 89 Dodd St., E. Orange, NJ 07017	84,656
A.J. Pilar Inc., Chapel St.—Lister Ave., Newark, NJ 07105	21,527
Scancelli Prints Inc., 190 Van Winkle St., E. Rutherland, NJ 07073	42,855
Scandia Packing Mach. Co., 180 Brighton Rd., Clifton, NJ 07012	8,609
Scarborough Manor, 10 Knickerbocker Rd., Dumont, NJ 07628	45,756
Schnefel Bros. Corp., 660 So. 17th St., Newark, NJ 07103	74,169
Scholastic Magazines, 900 Sylvan Ave., Englewood Cliffs, NJ 07632	94,651
New Jersey Realty Co., 65 Madison Ave., Morristown, NJ 07960, Attn: Mr. North	453,861
*Sci Pat Yarn Dye Co., Box 482, Paterson, NJ 07514	37,628
Scotch Plains Gdns., 1640 Vauxhall Rd., Union, NJ 07083	58,224
Scotland Gardens, 185 Valley St., S. Orange, NJ 07079	30,186
*Sears Roebuck Co., 201 South St., Morristown, NJ 07960	4,194
Sears Roebuck-Wayne-Ser. Ctr., Willowbrook Rt. 23-46, Wayne, NJ 07470	44,918
Sears Roebuck Inc., 212 Madison Ave., Passaic, NJ 07055	9,202
Sears Roebuck Co., 115 Maywood Ave., Maywood, NJ 07607	111,815
Seifer Dist. Inc., 343 Cortland St., Belleville, NJ 07109	53,156
Sel Rex Corp., 71 River Rd., Nutley, NJ 07110	95,413
*Seven Up Bottling Co., 109 W. 5th St., Plainfield, NJ 07060	8,425
Sevilla Realty Co., 2801 Boulevard, Jersey City, NJ 07306	45,117
*Seward Luggage Co., 133 Kossuth St., Newark, NJ 07105	25,101
Sheffield Gardens, 28 Sheffield Ave., Englewood, NJ 07631	21,075
Shiman Industries Inc., P.O. Box 1260, Newark, NJ 07101	24,385
Short Hills Ctry Day School, Country Day Drive, Short Hills, NJ 07078	19,527
Short Hills Gardens, 435 W. 23rd St., New York, NY 10011	84,532
Kaslow-Jeffrey, 806 Morris Turnpike, Short Hills, NJ 07078	62,920
Short Hills Village, 4 Forest Dr., Springfield, NJ	107,593
Sika Chem. Corp., 875 Valley Brook Ave., Lyndhurst, NJ 07071	111,293
*Singer's Downtown Mkt., 26 Wayne St., Jersey City, NJ 07302	62,934
S. Hekemian Co., 477 Main Street, Hackensack, NJ 07601	384,380
2 Broadway Enterprises, 2 Broadway, Paterson, NJ 07505	1,202
12-18 Riverside Dr. Corp., 912 South Ave., Plainfield, NJ 07062	13,006
Passaic Bros. Rlty, 210 Dalawanna Ave., Clifton, NJ 07014	9,581
25 So. Munn Ave., 980-18th Ave., Newark, NJ 07106	35,170
Winana Mgmt. Co., P.O. Box 442, Teaneck, NJ 07666	13,800
G&L Realty Co., P.O. Box 1656, Passaic, NJ 07055	13,287
All American Brush Mfg., 37 Empire St., Newark, NJ 07114	23,601
Mrs. S.F. Stettner, 670 Prospect Ave., West Orange, NJ 07052	4,201
Louis J. Osterstock, 297 S. 21st St., Irvington, NJ 07111	23,326
Phalia Rlty Corp., c/o Plaza Corp., 560 Sylvan Ave., Englewood Cliffs, NJ 07632	1,000
260 Gregory Ave. Co., 864 Warren Parkway, Teaneck, NJ 07666	41,975
275 Glenwood Corp., 109 Glenwood Road, Cranford, NJ 07016	11,166
WGK Realty Co., 26 Wingate Dr., Livingston, NJ 07039	11,178
*J.H. Delaney, 19 Franklin Terr., So. Orange, NJ 07079	9,813
*Feist & Feist Inc., 58 Park Place, Newark, NJ 08102	14,503
T.M. Apts. Inc., 901 Broad St., Elizabeth, NJ 07208	12,134
Mr. Philip Talkow, 15 Morningside Ct., Short Hills, NJ 07078	19,048
*Tanatex Chem Corp., Page Schuyler Ave., Lyndhurst, NJ 07071	182,091
Teaneck Gardens, P.O. Box 747, Teaneck, NJ 07666	95,038
Teaneck Nursing Home, Teaneck Rd., Rt. 4, Teaneck, NJ 07666	19,408
Concrete Plank Co. Inc., 2 Porete Ave., N. Arlington, NJ 07032	35,249
Technical Rubber Plastic Co., 180 Getty Ave., Clifton, NJ 07015	20,379
Tecnorm Co.-Signal Div., 523 Kent Ave., Brooklyn, NY 11211	57,033
Wolfe Geo. Telster, 9 Pitney St., W. Orange, NJ 07052	11,705
Reel Stron Fuel Co., 3 No. Ave E., Cranford, NJ 07016	10,838
Temple Beth El, 2419 Blvd., Jersey City, NJ 07304	13,323
Skytop Gardens, P.O. Box 737, Parlin, NJ 08859	326,208
Temple Israel, 423 Scotland Rd., S. Orange, NJ 07079	23,742
*P.E. Forst, 107 St. Nicholas Ave., Hillsdale, NJ 07642	15,814
H&W Inc., 272 A. Roanoke St., Woodbridge, NJ 07095	101,228
*P.J. Inganamort, 601 E. Bergan Mall, Paramus, NJ 07652	29,757
Jos. Teshon Inc., 196-21st Ave., Paterson, NJ 07501	38,673

Name and address of firm	Volume purchased (in gallons)
Thermal Amer. Fused Co., Rt. 202, Montville, NJ 07045	40,462
Thermo Electric Co., 109–5th St., Saddle Brook, NJ 07663	18,572
Thermwell Prod. Co., 150 E. 7th St., Paterson, NJ 07524	34,550
S.B. Thomas, Inc., 930 Riverview Dr., Totowa, NJ 07512	191,001
J.G. Tilip Inc., 80 Milltown Rd., Union, NJ 07083	12,574
*Top Line Foods Corp., 1 Greene St., Jersey City, NJ 07302	23,201
Topps Cleaners, 357 State St., Hackensack, NJ 07601	4,566
Topps Cleaners, 62–02 Fairlawn Ave., Fairlawn, NJ 07410	10,918
Mr. B. Torcivia-Torcon, 201 Groave St., Westfield, NJ 07090	7,291
The Towers-W Kaplan, 80 Huguenot Ave., Englewood, NJ 07631	66,237
Town Fuel Company, 395 Sol River St., Hackensack, NJ 07601	60,185
Towne Cleaners Inc., 841 E. St. Geo. Ave., Roselle, NJ 07203	15,572
*Townhall Vill. Apts., 60 Park Pl., Newark, NJ 07102	30,345
Paines Bros., 200 W. 57th St. Room 1003, New York, NY 10013	8,802
Trafalgar Builders, 272 A Roanoke St., Woodbridge, NJ 07095	109,002
*Trelawn Terrace, Rojay Mgt. Co., 20 Evergreen Pl., E. Orange, NJ 07018	86,012
Triangle Garden Apts., P.O. Box 747, Teaneck, NJ 07666	8,725
Donal Tribus, 363 Cedar La., Teaneck, NJ 07666	12,717
Trio Dye & Finishing Co., 420 E. 22nd St., Paterson, NJ 07524	104,560
*George W. Seiler, E.J. McCormick, 519 Main St., E. Orange, NJ 07018	24,624
Mr. Harry Rachmiel, Arcade Gardens, Old Bridge, NJ 08857	52,741
Troy Hills Village, 1480 Route #46, Parsippany, NJ 07054	281,549
*Troy Village Rlty. Co., Giller & Stein, 521 Fifth Ave., New York, NY 10017	270,256
Robert Goldberg, 12 So. Orange Ave., South Orange, NJ 07079	678,615
Tudor Hall Inc., 275 Engle St., Englewood, NJ 07631	38,346
U.K. Dye Works, 11 E. 12th St., Paterson, NJ 07524	12,346
Ultra Div. Witco Chem. Co., 2 Wood St., Paterson, NJ 07407	280,095
Union Container Corp., 439 Frelinghuysen Ave., Newark, NJ 07114	19,058
Leonard Feinen, 320 Lincoln Ave., Hasbrook Heights, NJ 07604	14,606
*Union Co. Newsdealers Supply, Box 113, Elizabeth, NJ 07201	16,928

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BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $600,000 (plus accrued interest) obtained as the result of a consent order which the DOE entered into with Pride Refining, Inc. (Case No. HEF–0218), located in Abilene, Texas. The funds will be available to customers that purchased refined petroleum products from Pride during the period January 1, 1973 through January 27, 1981.

DATE AND ADDRESS: Applications for refund of a portion of the Pride consent order funds must be postmarked within 90 days of publication of this notice in the **Federal Register** and should be addressed to: Pride Refining, Inc. Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All applications should conspicuously display a reference to Case No. HEF–0218.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, Depatment of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set forth below. The Decision and Order relates to a consent order entered into by Pride Refining, Inc. (Pride) of Abilene, Texas which settled possible pricing and allocation violations with respect to the firm's sales of refined petroleum products during the period January 1, 1973 through January 27, 1981. Under the terms of the consent order, $600,000 has been remitted by Pride and is being held in an interest-earning escrow account pending determination of its proper distribution.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established two-stage refund procedures and solicited comments from interested parties concerning the proper disposition of the Pride consent order funds. The Proposed Decision and Order discussing the distribution of the funds remitted by the consent order firms was issued on May 2, 1985. 50 FR 20002 (May 13, 1985).

The Decision an Order published with this Notice reflects an analysis of comments received from interested parties. As the Decision indicates, applications for refunds from the Pride consent order funds may now be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Applications will be accepted from customers who purchased refined petroleum products from Pride during the consent order period. The specific information required in an application for refund is set forth in the Decision and Order. The Decision and Order reserves the question of the proper distribution of any remaining consent order funds until the first-stage claims procedure is completed.

Dated: January 13, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

January 13, 1986.

Name of Firm: Prife Refining, Inc.
Date of Filing: October 13, 1983.
Case Number: HEF–0218.

Pursuant to the Department of Energy (DOE) procedural regulations, 10 CFR Part 205, Subpart V, on October 13, 1983, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) of the DOE in connection with a Consent Order entered into with Pride Refining, Inc. (Pride). The Petition requests that the OHA formulate and implement procedures to make refunds in order to remedy the effects of alleged violations of the DOE regualtions.

I. Background

Pride is a "refiner" of "cure oil" as those terms were defined at 10 CFR 212.31, and is headquartered in Abilene, Texas. The firm was subject to the Mandatory Petroleum Price and Allocation Regulations set forth at 10 CFR Part 211 and Part 212, Subpart E until January 28, 1981, when refined petroleum products were exempted from price and allocation controls. Exec. Order 12287, 46 9909 (January 30, 1981). An ERA audit of Pride revealed possible pricing and allocation violations in Pride's sales of refined petroleum products. In order to settle all claims and disputes between the DOE and the firm with respect to its sales of refined petroleum products during the period January 1, 1973 through January 27, 1981 (the consent order period), Pride and the DOE entered into a Consent Order on May 20, 1983. Pursuant to that Consent Order, Pride remitted to the DOE $600,000 to be deposited into an interest-bearing escrow account for ultimate distribution by the DOE. By its terms, the Pride Consent Order constitutes neither an admission by Pride nor a finding by the DOE that Pride violated any regulation during the consent order period. This Decision and Order concerns the distribution of the $600,000 consent order amount plus accrued interest.

On May 2, 1985, we issued a Proposed Decision and Order (PDO) tentatively setting forth procedures to distribute refunds to parties who were injured by Pride's alleged regulatory violations. *See Crystal Oil Co. et al.*, 6 Fed. Energy Guidelines ¶ 90,065 (Proposed Decision and Order, 1985).[1] In the PDO, we described a two-stage process for distribution of the Pride consent order funds. Specifically, we proposed to distribute funds in the first state to claimants who could demonstrate that they were injured by Pride's alleged regulatory violations during the consent order period. We further stated that any money available after payment of refunds to eligible claimants in the first stage would be distributed during a second-stage process.

The purpose of this Decision and Order is to establish the final procedures to be used for filing and processing claims in the first stage of the Pride refund proceeding. This Decision sets forth the information that a purchaser of refined petroleum products from Pride should submit in order to establish eligibility for a portion of the consent order funds. In establishing these requirements, we will address comments filed in response to the first-stage proposal in the PDO.[2] We will not, however, determine second-stage procedures in this Decision. Our determination concerning the final disposition of any remaining funds will necessarily depend on the size of the funds. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1981) (*Coline*). It would therefore be premature for us to address issues raised by commenters concerning the proposed disposition of funds remaining after all meritorious first-stage claims have been paid.

II. Jurisdiction

The Subpart V regulations set forth general guidelines by which the OHA may formulate and implement a plan for distribution of funds received as part of a settlement agreement or pursuant to a Remedial Order. It is DOE policy to use the Subpart V process to distribute such funds. *See Office of Enforcement*, 9 DOE ¶ 82,553 at 85,284 (1982). For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Coline* and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

We have reviewed the record in the present case and have determined that a Subpart V proceeding is an appropriate mechanism for distributing the Pride consent order fund. We will therefore grant the ERA's petition and assume jurisdiction over the fund.

III. Determination of Injury and Refund Amounts

Potential claimants in this proceeding will fall into the following categories: (i) Resellers (including retailers and refiners acting in the capacity of resellers) of refined petroleum products, and (ii) firms, individuals, or organizations that were consumers of those products.[3] The refined petroleum products must have been purchased either directly from Pride or in a chain of distribution leading back to Pride. As explained below, the consent order funds will be distributed to eligible claimants who demonstrate that they were injured by Pride's alleged regulatory violations.[4]

A. Claims Based on Alleged Overcharges

In general, resellers who file refund claims based on alleged pricing violations will be required to establish that they absorbed the alleged overcharges. To make this showing, they will have to demonstrate that, at the time they purchased petroleum products from Pride, market conditions would not permit them to increase their prices to pass through the additional costs associated with the alleged overcharges. In addition, resellers will generally be required to show that they had "banks" of unrecovered costs in order to demonstrate that they did not subsequently recover those costs by increasing their prices. *See Office of Enforcement*, 10 DOE ¶ 85,029 at 88,125 (1982). The maintenance of a bank will not, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982).

1. Small Claims Presumption

As we proposed in the PDO, we intend to establish a presumption of injury for small claims under which resellers whose claims do not exceed $5,000 will be presumed to have absorbed any overcharges and will be exempted from the general requirement that resellers make a detailed demonstration that they did not pass through to their own customers the increased costs associated with the alleged overcharges.

The State of Texas filed comments in opposition to our proposed presumption of injury for small claims. Texas contends that a reseller that has not proven that it did not pass through the alleged overcharges to its own customers has not established that it had "clean hands" and is therefore not permitted to participate in an equitable special refund proceeding. We cannot accept Texas' position concerning the applicability of the clean hands doctrine. According to that doctrine, persons who have engaged in improper conduct may be barred from receiving equitable relief. While the clean hands doctrine can be applied in Subpart V proceedings, *see, e.g., Tenneco Oil Co./Kern Oil & Refining Co.*, 10 DOE ¶ 85,022 at 88,098 (1982), and *Illinois Gasoline Dealers Association*, 13 DOE ¶ 85,114 (1985), it is not automatically applicable to all applicants. Individual circumstances must first be examined. Since the reseller price rule at 10 CFR 212.93 permitted the recoupment of all increased product costs, a reseller would not have acted improperly in passing through its increased product costs to its customers. Our focus in determining whether a refund applicant was injured is therefore generally not the propriety of the applicant's actions but the degree to which alleged overcharges were absorbed by that applicant.

The DOE procedural regulations expressly permit the use of presumptions in refund proceedings precisely because of the problems inherent in reconstruction pricing practices during past periods. *See* 10 CFR 205.282(e) and *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*). As we stated in the PDO, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an

[1] In the PDO, we also proposed refund procedures with respect to two other consent orders. Since the issuance of the PDO, we have determined that in view of the relatively large number of refund claimants expected in each proceeding, it is best to finalize the refund procedures separately.

[2] The only comments filed with respect to our first-stage proposal were submitted by the State of Texas. In addition, comments concerning second-stage procedures were filed by Texas as well as the States of Arkansas, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia.

[3] Several products covered by the Consent Order were deregulated during the course of the consent order period. *See* Fed. Energy Guidelines, Petroleum Regulations 1974–1981, ¶ 14,535. Claimants will, of course, be ineligible for refunds based upon purchases of products subsequent to the deregulation of those products.

[4] In the course of its audit of Pride, the ERA alleged that Pride and a joint venture in which Pride engaged with Energy Marketing Company (the EMCO joint venture) were the same firm for purposes of DOE regulations. Because the Pride autit was settled by the Pride Consent Order, the DOE never made a formal finding concerning this issue. However, the audit file indicates that the EMCO joint venture was considered part of Pride for purposes of the settlement negotiations. Purchasers of refined petroleum products from the EMCO joint venture may therefore apply for refunds in this proceeding.

applicant must compile and submit detailed factual information regarding the impact of the alleged overcharges, some of which in this case may have taken place as long as thirteen years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this information and the cost to the OHA of analyzing it may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain refunds. The use of presumptions is also desirable from an administrative standpoint because it allows the OHA to process a large number of routine refund claims quickly, and hence to use its limited resources more efficiently. We therefore reject Texas' contention that it would be inappropriate to adopt a presumption of injury for small claims.

Under the small claims presumption we are adopting, a reseller claimant will not be required to submit an additional evidence of injury beyond purchase volumes unless its refund exceeds $5,000.[5] *See Aztex Energy Co.*, 12 DOE ¶ 85,116 (1984) (*Aztex*).

2. Volumetric Presumption

In the PDO, we proposed to adopt a presumption that the alleged overcharges were dispersed equally in all of Pride's sales during the consent order period. OHA has referred to this presumption in the past as a volumetric refund amount. We have received no comments in opposition to it, and we shall adopt the volumetric presumption in this proceeding. To determine the per gallon volumetric factor in the instant proceeding, the $600,000 consent order amount will be divided by the total volume of refined petroleum products sold by Pride during the consent order period. The volumetric amount in this proceeding will be $0.00021 per gallon ($600,000 divided by 2,915,884,014 gallons of refined petroleum products). Refunds will be calculated by multiplying the volumetric factor by the total amount of refined petroleum products that an applicant purchased from Pride. The interest which has accrued on the money in the escrow account will be distributed to each successful claimant in proportion to its refund amount.

3. End-users

In addition to the presumptions we are utilizing in this proceeding, we are adopting our proposed finding that end-users or ultimate consumers whose businesses are unrelated to the petroleum industry were injured by the alleged overcharges settled by the Pride Consent Order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the increased cost of refined petroleum products on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil and Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). We have therefore concluded that end-users of refined petroleum products covered by the Pride Consent Order need only establish their purchase volumes from Pride in order to make a sufficient showing that they were injured by the alleged overcharges.[6]

B. Claims Based on Alleged Allocation Violations

As we stated in the PDO, claims for refunds based on alleged allocation violations are substantially different from those based on alleged overcharges. Allocation claims are based on a consent order firm's alleged failure to furnish petrolem products that it was obligated to supply to the claimant under the DOE allocation regulation. *See* 10 CFR Part 211. In prior cases, we have generally found that an allocation claimant should have been aware of the alleged violation at the time it occurred, and we have required that the claimant have taken some contemporaneous action to mitigate the injury. *See, e.g., Amoco*, 10 DOE at 88,220. In contrast to the per gallon volumetric refund amount usually granted in the case of an alleged price violation, allocation claimants have been awarded refunds in the nature of the damages attributable to the monetary loss that was caused by the alleged failure to deliver product. *See, e.g., Tenneco Oil Co./Research Fuels, Inc.*, 10 DOE ¶ 85,012 (1982). An allocation claimant in this proceeding must therefore have contemporaneously complained of Pride's alleged allocation violations and must provide a reasonable demonstration that its claim is well-founded, including the best available evidence of the injury that it sustained. *See Aztex*, 12 DOE at 88,359–60 n.6.

C. Minimum Refund

Finally, we shall establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those cases. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982); *see also* 10 CFR 205.286(b).

IV. Application for Refund Procedures

Having considered the comments received concerning the first-stage procedure tentatively adopted in our May 2, 1985 proposed decision, we have concluded that applications for refund should now be accepted from parties who purchased refined petroleum products from Pride during the consent order period. Applications must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register**. *See* 10 CFR 205.286. An application must be in writing, signed by the applicant, and specify that it pertains to the Pride Refining, Inc. Consent Order Fund, Case No. HEF–0218.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, 1000 Independence Avenue, SW., Washington, DC. Any claimant whose application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the information which the applicant claims is confidential has been deleted, together with a statement specifying why any such information is believed to be privileged or confidential.

Each application must also include the following statement: I swear (or affirm) that the information submitted is true

[5] Resellers that were spot purchasers from Pride will be ineligible to receive any refunds, even refunds below the threshold level, unless they make a showing that rebuts the presumption that they were not injured. As we have previously noted, a purchaser generally would not have made spot market purchases at increased prices unless it was able to pass through to its customers the full amount of those prices. *See Vickers*, 8 DOE at 85,396–97. In order to overcome the rebuttable presumption that it was not injured, a spot purchaser must show that it absorbed the alleged overcharges and should submit additional evidence to establish that it would be inappropriate to presume that it had discretion as to where and when to make the purchase(s) upon which the refund claim is based.

[6] Even though they operate as resellers, cooperatives will be excused from the requirement that they make a detailed showing of injury with respect to that portion of their purchases that was resold to their members, since any refunds received by cooperatives will inure to the benefit of their customers, who typically are also their member-owners. *See Office of Special Counsel*, 9 DOE ¶ 82,538 (1982).

and accurate to the best of my knowledge and belief. *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name, title, and telephone number of a person who may be contacted by the OHA for additional information concerning the application. All applications should be sent to: Pride Refining, Inc. Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, Washington, DC 20585. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284 and the procedures set forth in this Decision and Order.

In order to assist applicants in establishing eligibility for a portion of the Pride consent order fund, the following subjects should be covered in applications for refund:

A. Claims Based on Alleged Overcharges

1. Each applicant should report, for each refined petroleum product it purchased from Pride, its purchase volumes by month for the period it is claiming that it was injured by the alleged overcharges.

2. Each applicant should specify how it used the product(s)—i.e., whether it was a reseller or an end-user.

3. If the applicant is a reseller who wishes to claim a refund in excess of $5,000, it should also:

(i) State whether it maintained banks of unrecouped increased product costs from the date of the alleged violation until the product was decontrolled, and furnish OHA with quarterly bank calculations;[7]

(ii) Submit evidence to establish that it did not pass through the alleged overcharges to its customers. For example, a firm may submit market surveys to show that price increases to recover alleged overcharge were infeasible.

B. Claims Based on Alleged Allocation Violations

Each applicant seeking a refund based upon alleged allocation violations should provide:

1. A description of any complaints made to the DOE and/or Pride;

2. Its based period allocation of refined petroleum products from each of its suppliers for each month of the consent order period; [8]

3. Its actual purchases of refined petroleum products from each supplier during each month of the consent order period;

4. A description of its efforts to locate alternative supplies of the allocated product(s);

5. A computation of lost net profit (per gallon) sustained as the result of alleged allocation violations by Pride.

C. All Applicants

Each applicant should report whether it is or has been involved as a party in any DOE or private Section 210 enforcement actions. If these actions have terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. Of course, the applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendancy of its application for refund. *See* 10 CFR 205.9(d).

It Is Therefore Ordered That:

(1) Applications for Refunds from the fund remitted to the Department of Energy by Pride Refining, Inc. pursuant to the Consent Order Executed on May 20, 1983 may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: January 13, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86-1327 Filed 1-22-86; 8:45 am]

BILLING CODE 6450-01-M

[7] The bank requirement for motor gasoline retailers was eliminated in the amendments to the retailer price rule effective July 15, 1979. 44 FR 4254 (July 19, 1979). Therefore, no showing of cost banks will be required of motor gasoline retailers after that date.

[8] Prior to March 1979, the base period was the corresponding month of 1972. Beginning in March 1979, the base period was the corresponding month of the period November 1977 through October 1978. *See* 10 CFR 211.102 and Standby Petroleum Product Allocation Regulations Activation Order No. 1, 44 FR 11202 (February 28, 1979), Fed. Energy Guidelines, Petroleum Regulations 1974–1981, ¶ 14,992A.

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $115,695.89 obtained as a result of a consent order which the DOE entered into with Richardson Ayres Jobber, Inc. (Ayres), a reseller-retailer of petroleum products located in Alexandria, Louisiana. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund of a portion of the Ayres consent order funds must be filed in duplicate and must be received within 90 days of publication of this notice in the **Federal Register.** All applications should refer to Case Number HEF-0166 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Walter J. Marullo, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The decision relates to a consent order entered into by the DOE and Richardson Ayres Jobber, Inc. (Ayres) which settled all claims and disputes between Ayres and the DOE regarding the manner in which Ayres applied the federal price regulations with respect to its sales of motor gasoline and No. 2 diesel fuel during the period November 1, 1973, through April 30, 1974 (consent order period). A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the Ayres consent order funds was issued on November 12, 1985. 50 FR 47,428 (November 18, 1985).

The Decision sets forth procedures and standards that the DOE has formulated to distribute the contents of an escrow account funded by Ayres pursuant to the consent order. The DOE has decided to accept Applications for Refunds from firms and individuals that purchased motor gasoline and No. 2 diesel fuel sold by Ayres during the consent order period. Eligible applicants include downstream customers as well as first purchasers. In order to receive a refund, a claimant will be required to submit a schedule of its monthly purchases of Ayres motor gasoline and No. 2 diesel fuel and to demonstrate that it was injured by Ayres' pricing practices. A downstream purchaser must also submit the name of its immediate supplier and indicate why it

believes the products were originally sold by Ayres.

As the accompanying Decision and Order indicates, Applications for Refunds may now be filed by customers that purchased motor gasoline and No. 2 diesel fuel sold by Ayres during the consent order period. Applications will be accepted provided they are received no later than 90 days after publication of this Decision and Order in the **Federal Register**. The specific information required in an Application for Refund is set forth in the Decision and Order.

Dated: January 13, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

January 13, 1986.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Petitioner: Richardson Ayres Jobber, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF–0166.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Richardson Ayres Jobber, Inc. (Ayres). This Decision and Order contains the procedures which the OHA has formulated to distribute the funds received pursuant to that consent order.

I. Background

Ayres is a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31 and is located in Alexandria, Louisiana. A DOE audit of Ayres' records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. The audit alleged that between November 1, 1973, and April 30, 1974 (consent order period), Ayres committed possible pricing violations amounting to $170,146.78 with respect to its sales of motor gasoline and No. 2 diesel fuel.

In order to settle all claims and disputes between Ayres and the DOE regarding the firm's sales of motor gasoline and No. 2 diesel fuel during the period covered by the audit, Ayres and the DOE entered into a consent order on September 29, 1981. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. In addition, the consent order states that Ayres does not admit that it violated the regulations.

Under the terms of the consent order, Ayres was required, in a series of installments, to deposit $101,835, plus interest, into an interest-bearing escrow account for ultimate distribution by the DOE. Ayres made its final payment on July 25, 1983[1]

II. Jurisdiction and Authority to Fashion Refund Procedures

The general guidelines which the OHA may use to formulate and implement a plan to distribute funds received as the result of a consent order are set forth in 10 CFR Part 205, Subpart V. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981); and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

On November 12, 1985, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of refunds to parties that can make a reasonable showing of injury as a result of Ayres' alleged violations in its sales of motor gasoline and No. 2 diesel fuel during the consent order period. 50 Fed. Reg. 47,428 (November 18, 1985). The PD&O stated that the basic purpose of a special refund proceeding is to make restitution for injuries that were experienced as a result of actual or alleged violations of the DOE regulations.

In order to give notice to all potentially affected parties, a copy of the Proposed Decision was published in the **Federal Register** and comments regarding the proposed refund procedures were solicited. In addition, copies of the PD&O were mailed to various petroleum dealers' associations. Since no comments were received, the procedures outlined in the PD&O will be adopted.

III. Refunds to Identifiable Purchasers

In the first stage of the Ayres refund proceeding, we will distribute the funds currently in escrow to claimants that demonstrate that they were injured by the alleged overcharges. In order to be eligible to receive a refund, claimants will have to file an application and, with the three exceptions discussed below, show the extent to which they were injured by the alleged overcharges. To the extent that any individual or firm can establish injury, it will be eligible for a share of the consent order fund.

In this case we will adopt two rebuttable presumptions as well as two findings regarding injury. These presumptions and findings have been used in many previous special refund cases. First, we will presume that purchasers of Ayres motor gasoline and No. 2 diesel fuel that are claiming small refunds ($5,000 or less) were injured by the alleged overcharges. Second, in the absence of compelling material, we will adopt a presumption that spot purchasers were not injured. Third, we will make a finding that end users or ultimate consumers of Ayres motor gasoline and No. 2 diesel fuel whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges. Lastly, we will not require a detailed demonstration of injury from regulated utilities or agricultural cooperatives that purchased Ayres motor gasoline and No. 2 diesel fuel and passed the alleged overcharges associated with those products through to their end-user members. Prior OHA decisions provide detailed explanations of the bases of these presumptions and findings. *E.g., Peterson Petroleum, Inc.*, 13 DOE ¶ 85,191 at 88,508–10 (1985). The rationale for their use was also fully explained in the PD&O. 50 FR 47428 at 47429–30 (November 18, 1985). These presumptions and findings will permit claimants to apply for refunds without incurring disproportionate expenses and will enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

A reseller or retailer which claims a refund in excess of $5,000 will be required to document its injury. While there are a variety of methods by which a firm can make such a showing, a firm is generally required to demonstrate (i) that it maintained a "bank" of unrecovered costs, in order to show that it did not pass the alleged overcharges through to its own customers, and (ii) that as a result of market conditions, it did not pass through those increased costs.[2]

[1] Ayres paid $115,695.89 including installment interest into the escrow account. This amount represents the principal which will form the basis for refund calculations. The total value of the Ayres account stood at $157,141.37 as of December 31, 1985.

[2] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be

Continued

A. Calculation of Refund Amounts

We will use a volumetric method to determine the refunds of eligible applicants. This method presumes that the alleged overcharges were spread equally over all the gallons of motor gasoline and No. 2 diesel fuel sold by Ayres during the consent order period. Under the volumetric method, a claimant will be eligible to receive a refund equal to the number of gallons of Ayres motor gasoline and No. 2 diesel fuel it purchased times the volumetric factor. The volumetric factor is the average per gallon refund and in this case equals $0.013421.[3] In addition, successful claimants will receive a proportionate share of the accrued interest.

We recognize that a particular purchaser could have suffered a disproportionate share of the alleged overcharges. Any purchaser that can make a showing of disproportionate overcharge may file a refund application based on such a claim.

As in previous cases, only claims for at least $15 will be processed. We have found through our experience in prior refund cases that the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b). The same principle applies here.

If valid claims exceed the funds available in the escrow account, all refunds will be reduced proportionately. Actual refunds will be determined after analyzing all appropriate claims.

IV. Applications for Refund

We have determined that by using the procedures described above, we can distribute the Ayres consent order funds as equitably and efficiently as possible. Accordingly, we will now accept applications for refunds from individuals and firms that purchased motor gasoline and No. 2 diesel fuel sold by Ayres between November 1, 1973, and April 30, 1974. Eligible applicants include downstream customers as well as first purchasers.

There is no specific application form which must be used. In order to receive a refund, each claimant must submit the following information:

(1) A schedule of its monthly purchases of Ayres motor gasoline and No. 2 diesel fuel along with any relevant information necessary to support its claim in accordance with the presumptions and findings outlined above. If the applicant was a downstream purchaser it must also submit the name of its immediate supplier and indicate why it believes the products were originally sold by Ayres;

(2) Whether the applicant has previously received a refund, from the source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding;

(3) Whether there has been a change in ownership of the firm since the audit period. It there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund;

(4) Whether the applicant is or has been involved as a party in DOE enforcement or private, § 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d); and

(5) The name and telephone number of a person who may be contacted by this Office for additional information.

Finally, each application must include the following statement: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief," *See* 10 CFR 205.283(c); 18 U.S.C. 1001.

All applications must be filed in duplicate and must be received within 90 days from the date of publication of this Decision and Order in the **Federal Register**. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any applicant which believes that its application contains confidential information must indicate this and submit two additional copies of its application from which the information has been deleted. All applications should refer to Case No. HEF-0166 and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

It Is Therefore Ordered That:

(1) Applications for Refunds from the funds remitted to Department of Energy by Richardson Ayres Jobber, Inc. pursuant to the Consent Order executed on September 29, 1981, may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Dated: January 13, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86-1328 Filed 1-22-86; 8:45 am]

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eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,122 (1982) (Ada).

[3] This figure is derived by dividing the $115,695.89 received from Ayres by 8,620,411 gallons of motor gasoline and No. 2 diesel fuel sold by Ayres during the consent order period.

ENVIRONMENTAL PROTECTION AGENCY

[OW-FRL-2958-5]

Ground Water System of the Cattaraugus Creek Basin Aquifer; Request for EPA Determination Regarding Sole Source Aquifer Status; New York

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: A petition has been submitted by the Southtown Homeowners Association, Sardinia, New York pursuant to section 1424(e) of the Safe Drinking Water Act, Pub. L. 93-523, requesting the Administrator of the Environmental Protection Agency to make a determination that the Cattaraugus Creek Basin Aquifer is the sole or principal drinking water source for approximately 20,880 residents of Cattaraugus, Erie and Wyoming Counties, which, if contaminated, would create a significant hazard of public health.

DATE: Comments, data and references in response to this Notice should be submitted in writting to Christopher J. Daggett at the address given below within 60 days of publication of this notice.

In addition to considering public comments sent to EPA, the Agency will hold a public hearing on Tuesday, February 25, 1986 from 1:00-3:00 p.m. and from 7:00-9:00 p.m. in Sardinia, New York, at the address given below. At the completion of the public hearing, the public comment period will be open until March 25, 1986.

ADDRESSES: Comments, data and references in response to this Notice should be submitted in writing to Christopher J. Daggett Regional Administrator, Region II, Environmental Protection Agency, 26 Federal Plaza,

New York, New York 10278, Attention: Drinking/Ground Water Protection Branch.

Information concerning the Cattaraugus Creek Basin Aquifer, including the original petition and attachments, will be available for inspection at the above address in the Drinking/Ground Water Protection Branch, Room 824 and Office of the Town Clerk at Sardinia, New York.

The public hearing will be at the Town Hall, Savage Road, Sardinia, New York 14134.

FOR FURTHER INFORMATION CONTACT: Damian J. Duda (212) 264–1800, Region II, Environmental Protection Agency, Drinking/Ground Water Protection Branch, Room 824, 26 Federal Plaza, New York, New York 10278.

SUPPLEMENTARY INFORMATION: This petition is reprinted in full below:

Petition—Sole or Principal Source Aquifer Designation

1. Petitioner—Southtown Homeowners Association Inc.

Association contact: Mrs. Helen Feraldi, 13300 Allen Road, Chafee, N.Y. 14030
Technical consultant: JEB Consultants, John E. Banaszak P.E., 506 Linwood Ave., Buffalo, N.Y. 14209

2. Petitioner's interest in the Administrator's determination lies in the fact that the subject aquifer is the sole source of drinking water for petitioner and all residents in the subject area, with the exception of those people with wells finished in bedrock. Although precise figures are not available, the number of people with rock wells is substantually less than fifty percent of the area's population. Petitioner is also interested in utilizing every means available to protect the water in this aquifer, and to ensure that it is of the highest quality possible.

3. The Erie-Niagara Basin is located in western New York State, and has an area of approximately 1950 square miles (Exhibit No. 1). The basin consists of the watersheds of all streams draining into Lake Erie and the Niagara River, between Tonawanda Creek in the north and Cattaraugus Creek in the south. The basin contains all of Erie County (except Grand Island) and substantial portions of Niagara. Genesee, Wyoming and Cattaraugus counties. Small portions of Allegany, Chautaugua and Orleans counties are situated along the basin periphery.

Topographic relief in the basin ranges from an elevation of about 2,000 feet above mean sea level (msl) in the Appalachian Uplands of the southeast to about 600 feet msl along the Erie-Ontario Lowlands. The rolling hills of the Allegany Plateau in the south give way to relatively flat plains in the north and along Lake Erie. Relief of the present land surface is due to preglacial erosion of the bedrock and subsequent topographic modification by glaciation. The bedrock consists of layers of shale, siltstone, sandstone, limestone and dolomite, exposed in east-west bands across the basin. The beds dip gently to the south. In contrast to the southern dip of the bedrock, the land surface rises to the south, largely because preglacial erosion was more vigorous in the northern part of the basin, than in the southern part where the more resistant shales predominate. In the hilly southern half (The Appalachian Uplands), preglacial valleys, deepended by glacial erosin, are cut into the shale. The valleys are partly filled with glacial deposits so that some of the present streams flow 200 to 600 feet above the bedrock floors of the valleys. The surrounding hills are veneered with till material.

The basin is underlain by sedimentary bedrock which is mostly overlain with unconsolidated deposits. Most of the unconsolidated deposits were formed as a result of continental glaciation as recently as 10,000 to 15,000 years ago. These deposits include till, outwash, and lacustrine deposits. Of these, the till and lacustrine materials are generally tight formations with poor water-bearing characteristics. The outwash deposits on the other hand, consist of sand and gravel deposits which are usually very previous and capable of yielding large quantities of good quality water. As shown on Exhibit No. 2, these sand and gravel deposits form an interfingered network and are typically found along the course of existing drainage features. The glacial deposits generally are less than 50 feet thick in the northern part of the basin. They are considerably thicker in some valleys in the southern part and reach a maximum known thickness of 600 feet near Chaffee in the Town of Sardina.

4. The aquifer for which the sole source designation is being sought consists of the sand and gravel deposits along Cattaraugus Creek and its tributaries upstream from Springville. This aquifer is in the southern part of the Erie-Niagara Basin and is delineated on Exhibit No. 2. The Townships of Sardina, Yorkshire, Freedom, Arcade, and parts of Concord, Ashford, Machias and Farmersville are situated over this aquifer, which overs an area of approximately 120 square miles.

As described in a USGS report (1)

"The most outstanding broad feature of the ground water resources of the area (The Erie-Niagara Basin) is the distribution of extensive and thick sand and gravel aquifers. The greatest potential for ground water development in these deposits exists in a peripheral belt of the area that extends westward through the Cattaraugus Basin and northward through the Tonawandw Basin to Batavia. The present degree of development barely skims the surface to these resources.

Particulary noteworthy among these subsurface reservoirs are the sand and gravel deposits drained by Spring Brook at Springville, Hosmer Brook at Sardinia, Elton Creek upstream from Elton, Lime Lake Outlet, Cattaraugus and Clear Creek upstream from Arcade and Tonawanda Creek between Attica and Batavia."

With the exception of Tonawanda Creek, these streams are tributary to the upper reaches of Cattaraugus Creek, and some of them are part of its headwaters. These streams are incised into the sand and gravel deposits, and as such, they serve as both discharge and recharge points for the aquifer. This is a water-table aquifer which is recharged by infiltration and percolation of precipitation. Recharge to these deposits is very significant, with average annual replenishment rates ranging from 0.4 to 4.0 mdg/sq.mi. as shown on Exhibit No. 3. These high recharge rates are attributable to the presence of incised streams, plus the shallow depth of these deposits from the ground surface, and the lack of an overlying aquitard.

These same factors which provide such rapid recharge, also make the aquifer very susceptible to contamination. Because surface and ground waters are so intimately related here, any surface contamination can be directly transmitted to the aquifer. The sorptive capacity of gravel is minimal. Any surface contamination could pass, basically unfiltered, to the aquifer, since in many areas, such as the Village of Chaffee, the gravel deposits directly underlie the topsoil layer.

5. There are a number of public and private water supply companies operating within the subject area which supply the larger towns and villages. These companies rely on groundwater as their source of supply, and chlorination is the only treatment generally given. The following is a list of the community water supply systems in the subject area. After each listing, the population of the township where the municipality is located, and the number of units served, are given. The assumption is that all those not serviced by a water supply system satisfy their water requirements through individual residential wells.

Municipality	Population	Units served
Machias	2,500	200
Springville	8,200	1,327
Delevan	3,680	602
Chaffee	2,800	86
Arcade	3,700	1,013

6. Everybody in the subject area relies on groundwater as a source of supply because it is the most economical and only practical alternative. The overlying streams serve as both discharge and recharge points for the groundwater. Contamination of this aquifer could also result in degradation of surface waters since they are connected hydraulically. Utilization of surface water as an alternate source of supply does not appear viable without construction of treatment and distribution systems.

Bedrock wells typically have yields on the order of 10 to 15 gpm if drawing from a fracture zone. If the fracture zone is absent, water is obtained from joints deeper in the rock, and yields are on the order of 1 to 7 gpm. Dry holes and insufficient yields are not uncommon in bedrock. Therefore, even under the best of circumstances, bedrock wells do not seem like a viable source of water for the area. The remaining source of water is Lake Erie, however the logistics and expense involved with developing this source make it economically unfeasible. As stated in the conclusion of the Erie-Niagara Basin—Ground Water Resources report (1)

"The best sources of ground water in the area are exposed sand and gravel deposits distributed in the Cattaraugus Creek basin and in the Tonawanda Creek basin south of Batavia. Less extensive sand and gravel aquifers lie along Eighteen Mile Creek, East Branch Cazenovia Creek, and Buffalo Creek. The sand and gravel deposits with the largest potential are distributed through the part of the area most distant from and considerably higher in altitude than Lake Erie. They, therefore, are a ready source of water for the part of the area most difficult to serve from present distribution systems drawing water from Lake Erie."

7. Contamination of this aquifer would result in a significant health hazard because it is the sole source of domestic and drinking water for the people who live in this area. Because of its shallow depth from the ground surface in certain areas, the aquifer is susceptible to contamination from many sources including: contamination of surface waters, seepage from surface impoundments, leakage from subsurface tanks or pipelines, any surface contamination such as run-off or spill events.

The applicant is aware of three proposed federally funded projects which might potentially impact this aquifer:

A. Route 16 improvements including the Cattaraugus Creek crossing and the South Wales to Delevan Corridor work.

B. The Delevan Housing Project.

C. The Tenessee Gas Pineline.

8. References:

(1) *Ground Water Resources of the Erie-Niagara Basin, New York;* A.M. LaSala, Jr., State of New York Conservation Department, Water Resources Commission, 1968.

(2) *Erie-Niagara Basin Comprehensive Water Resources Plan—Main Report;* Erie-Niagara Basin Regional Water Resources Planning Board, December 1969.

Most of the information in the preceeding narrative was taken from these two references, and in some cases it is presented verbatim.

Exhibits:

(1) General Map of the Erie-Niagara River Basin.

(2) Generalized Distribution of Unconsolidated Deposits.

(3) Surficial Ground Water Deposits.

Respectfully submitted for Southtowns' Homeowner Association.

Helen Feraldi,

Sec't-Treasurer.

For JEB Consultants:

John E. Banaszak,

Petition was submitted on February 28, 1985.

EPA intends to decide whether to make the requested determination at the earliest time consistent with a complete review of the relevant data and information and with a full opportunity for public participation. In this regard, the Agency is developing a full factual record and is soliciting comments, data and references to additional sources of information relevant to the determination required by section 1424(e). In particular, information is sought concerning the hydrogeology of the Cattaraugus Creek Basin Aquifer, the boundaries of the aquifer and its recharge areas. In addition, EPA requests information concerning the area or areas dependent upon the aquifer for drinking water, the significance of current or anticipated projects receiving Federal financial assistance that may result in contamination as a result of current activities or anticipated events, any possible alternative drinking water supplies and any other relevant information.

Comments, data and references in response to this Notice should be submitted in writing to Christopher J. Daggett, Regional Administrator, Region II, Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278, Attention: Drinking/Ground Water Protection Branch, within 60 days of this Notice. Information concerning the Cattaraugus Creek Basin Aquifer, including the original petition and attachments, will be available for inspection at the above address in the Drinking/Ground Water Protection Branch—Room 824 and at the Office of the Town Clerk, Sardinia, New York.

In addition to considering public comments sent to EPA, the Agency will hold a public hearing on Tuesday, February 25, 1986 from 1:00 P.M.–3:00 P.M. and 7:00 p.m.–9:00 p.m. at the Town Hall, Savage Road, Sardinia, New York 14134.

Persons who wish to present prepared statements at the public hearing are urged to give notice to Mr. Damian J. Duda, Region II, Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278, (212) 264–1800. If possible, written copies of these statements should be submitted at the hearing for inclusion into the record. At the completion of the public hearing, the public comment period will be open until March 25, 1986.

Christopher J. Daggett,

Regional Administrator.

[FR Doc. 86–1319 Filed 1–22–86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1562]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

January 14, 1986.

The following listings of petitions for reconsideration filed in Commission rulemaking proceedings is published pursuant to § 1.429(e). Oppositions to such petitions for reconsideration must be filed within 15 days after publication of this Public Notice in the **Federal Register.** Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Paris, Texas) (MM Docket No. 85–212, RM's 4925, 5137 & 5141).

Filed by: Thomas J. Keller, Attorney for The Gene Sudduth Co., Inc., on 12–23–85.

FEDERAL COMMUNICATIONS COMMISSION.

William J. Tricarico,

Secretary.

[FR Doc. 86–1501 Filed 1–22–86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–010798–003

Title: Port of Galveston Terminal Agreement.

Parties: Board of Trustees of the Galveston Wharves Container Terminal of Galveston, Inc.

Synopsis: The proposed amendment would extend the agreement on a month-to-month basis pending completion of a long term agreement between the parties. The parties have requested a shortened review period.

Agreement No.: 021-010876.

Title: Port of Palm Beach Terminal Agreement.

Parties:

Port of Palm Beach District (Port)

Gulfstream Line, Inc. (Gulfstream)

Synopsis: The proposed agreement would permit the Port to lease to

Gulfstream certain premises on wharf two of the Port. The agreement shall expire on November 30, 1992.

Agreement No.: 021–010876–001.

Title: Port of Palm Beach Terminal Agreement.

Parties:

Port of Palm Beach District
Gulfstream Line, Inc.

Synopsis: The proposed amendment would make adjustments in the basic lease (Agreement No. 021–010876, being considered concurrently) concerning use of the premises, access to the premises, wharfage guarantees and release of the premises.

Agreement No.: 012–010877.

Title: Tampa Port Authority Terminal Agreement.

Parties:

Tampa Port Authority
Gulf Tampa of Florida, Inc. d/b/a Southport Stevedores

Synopsis: The proposed agreement would extend, consolidate, renew and modify leases currently existing between the parties. The agreement will remain in effect for three years.

Agreement No.: 203–010878.

Title: Three Lines' Agreement in the Far East-U.S. Atlantic Coast Trades.

Parties:

Nippon Yusen Kaisha
Mitsui O.S.K. Lines. Ltd.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed agreement would establish a cooperative working arrangement between the parties in the trade between the Far East and U.S., Atlantic Coast ports, and inland and coastal points via such ports. It would authorize joint meetings, discussions, exchange of information and the reaching of understandings among the parties and with third persons within the scope set forth in Article 5 of this agreement. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: January 17, 1986.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 86–1436 Filed 1–22–86; 8:45 am]

BILLING CODE 6730–01–M

Agreeement Filed

The Federal Maritime Commission hereby gives notice that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of the agreement and the supporting statement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit protests or comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 20 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 121–010874.

Title: Port of Oakland Terminal Agreement.

Parties:

Port of Oakland (Port)
Puget Sound Tug & Barge Co. d/b/a Hawaiian Marine Lines (HML)

Synopsis: The proposed agreement would give HML the non-exclusive right to use certain assiged premises at the Port's Outer Harbor Terminal, Berth 6, for operations in its West Coast/Hawaiian service. The agreement would terminate on December 31, 1990.

Filing Party: John E. Nolan, Esquire, Port of Oakland, 66 Jack London Square, Oakland, California 94607.

By order of the Federal Maritime Commission.

Dated: January 17, 1986.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 86–1437 Filed 1–22–86; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Reissuance of License; Reid & Co. et al.

Notice is hereby given that the following ocean freight forwarder licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License No.	Name/address	Date reissued
798–R	Mary Morris Reid d.b.a. Reid & Co., 150 Marine St., Lake Charles, LA 70602.	Dec. 13, 1985.
1514	Pandair Freight, Inc., 22 Hoffman Ave., San Francisco, CA 94114.	Jan. 8, 1986.
2733	Falcon Forwarding Co., Inc., 177–25 Rockaway Blvd., Jamaica, NJ 11434.	Do.

Eugene P. Stakem,

Deputy Director, Bureau of Tariffs.

[FR Doc. 86–1392 Filed 1–22–86; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

South Kipling Bankshares, Ltd.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than January 31, 1986.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *South Kipling Bankshares, Ltd.*, Denver, Colorado; to become a bank holding company by acquiring 99 percent of the voting shares of North American National Bank, Littleton, Colorado.

Board of Governors of the Federal Reserve System, January 16, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-1419 Filed 1-22-86; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Under Review by the Office of Management and Budget: Classified Information Nondisclosure Agreement (Government/Nongovernment)

AGENCY: Office of Administration, GSA.

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (144 U.S.C. Chapter 35), the General Services Administration (GSA) resubmits to the Office of Management and Budget (OMB) a request to review an existing information collection.

ADDRESSES: Send comments to Franklin S. Reeder, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Gareth G. Wells, GSA Clearance Officer, General Services Administration (CAID), Washington, DC 20504.

FOR FURTHER INFORMATION CONTACT: Ethel Theis, Information Security Oversight Officer (202-535-7251).

SUPPLEMENTARY INFORMATION:

a. *Purpose.* The forms serve as a contractual agreement between the U.S. Government and cleared employees and help to prevent the disclosure of classified information to unauthorized persons.

b. *Annual reporting burden.* This is estimated as follows: Respondents and responses 5284, hours 423.

c. *Obtaining copies of proposal.* Requestors may obtain copies of the proposal from the directives and Reports Management Branch (CAID), Room 3012, GS Building, Washington, DC 20405, telephone (202-566-0666).

Dated: January 14, 1986.

Johnny T. Young,

Acting Director, Information Management Division.

[FR Doc. 86-1369 Filed 1-22-86; 8:45 am]

BILLING CODE 6820-81-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974—Deletion of Notice of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is deleting a notice describing a system of records maintained by the Department's Office of Personnel. The notice titled "Health Unit Medical Records—Interior, Office of the Secretary-81" (OS-81), previously published in the **Federal Register** on April 11, 1977 (42 FR 19032), is being deleted from the inventory of systems of records notices describing records maintained by the Department of the Interior that are subject to the provisions of the Privacy Act. The records described in OS-81 are now covered under a governmentwide system of records notice titled "Employee Medical File System Records", OPM/GOVT-10 which was published by the Office of Personnel Management in the **Federal Register** on April 17, 1985 (50 FR 15255).

This change is effective. Additional information concerning this action can be obtained from the Department Privacy Act Officer, Office of the Secretary (PIR), Room 7357, Main Interior Building, U.S. Department of the Interior, Washington, D.C. 20240.

Dated: January 6, 1986.

Oscar W. Mueller, Jr.,

Director, Office of Information Resources Management.

[FR Doc. 86-1371 Filed 1-22-86; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

[A-9272; 6-00162]

Public Land Exchange, Coconino County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action Exchange, Public Land Coconino County, Arizona.

SUMMARY: The following described lands and interests therein ahve been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian

Coconino County

T. 27 N., R. 9 E.,
Sec. 6, lots 3 thru 10, inclusive, SE¼NW¼, E½SW¼, N½SE¼, SE¼SE¼.

Containing 463.46 acres, more or less.

In exchange for these lands, the Arizona State Land Department has reconveyed to the United States the following described lands within the Grand Canyon National Park:

Gila and Salt River Meridian

T. 30 N., R. 15 W.,
Sec. 16, lots 1 thru 4, inclusive.
T. 31 N., R. 13 W.,
Sec. 36, SW¼NW¼.
T. 31 N., R. 12 W.,
Sec. 32, all;
Sec. 36, all.
T. 32 N., R. 10 W.,
Sec. 16, S½SW¼ and SE¼.
T. 36 N., R. 5 E.,
Sec. 16, all.

Containing 2,341.40 acres, more or less.

The public land to be transferred is subject to the following terms and conditions:

1. Reservations to the United States—(a) right-of-way for ditches and canals pursuant to the Act of August 30, 1890; (b) highway right-of-way PHX-086841; and (c). Electric transmission right-of-way AR-012874.

2. Subject to—(a) prior valid rights existing as of the date of this action; (b) road right-of-way A-17505; (c) electric line right-of-way AR-032475; (d) buried telephone cable right-of-way AR-034623; and (e) pipeline and oxidation pond right-of-way A-10861.

Publication of this Notice will segregate the subject lands from all appropriations under the public lands laws, including the mining laws, but not mineral leasing laws. This segregation will terminate upon the issuance of a patent or two years from the date of this Notice, or upon publication of a Notice of Termination.

Detailed information concerning this exchange can be obtained from the Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401. For a period of forty-five (45) days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: January 13, 1986.

Marlyn V. Jones,

District Manager.

[FR Doc. 85-1372 Filed 1-22-85; 8:45 am]

BILLING CODE 4310-32-M

Exchange of Public Interests in Sheridan County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Exchange of Public Coal Interests in Sheridan County, Wyoming.

SUMMARY: The Bureau of Land Management is publishing this notice to announce its intention to comply with the court order dated December 3, 1985, issued in *Whitney Benefits, Inc.* v. *United States*, Civ. No. 84–193 (D. Wyo.). Judge Kerr, United States District Court for Wyoming, has ordered tender of federal coal in exchange for coal offered by Whitney Benefits, Inc. by January 30, 1986. This notice is being published earlier in the process than would occur in the absence of the court order. At this time neither the evaluation of the offered coal nor the environmental assessment is complete. Should the environmental assessment indicate the preparation of an environmental impact statement is necessary it may be necessary to forego such action to comply with the court's order. The Bureau of Land Management has determined that the following described public coal interests are suitable for disposal by exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716 and under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1260(b)(5)). This acreage constitutes the "Ash Creek" tract as delineated by the Bureau of Land Management for study as a competitive coal leasing tract.

Sixth Principal Meridian

T. 58 N., R. 84 W.,
Sec. 15, lot 1;
Sec. 17, lot 1;
Sec. 18, lot 1;
Sec. 19, lots 1–4, E½W½, E½;
Sec. 20, all;
Sec. 21, all;
Sec. 22, NW¼, S½;
Sec. 27, all;
Sec. 28, all;
Sec. 29, all;
Sec. 30, lots 1–4, E½W½, E½;
Sec. 31, lots 1–4, E½W½, E½;
Sec. 32, all;
Sec. 33, all;
Sec. 34, all.

In exchange for conveying title to a portion of those lands, acreage and shape to be determined upon completion of the valuation, the United States will acquire the following described coal from Whitney Benefits, Inc.:

Sixth Principal Meridian

T. 57 N., R. 83 W.,
Sec. 6, lots 2–5, SE¼NW¼, E½SW¼;
Sec. 31, lots 3, 4, E½NE¼, SW¼NE¼, E½SW¼, W½SE¼.
T. 57 N., R. 84 W.,
Sec. 1, Lot 1, S½SW¼;
Sec. 11, E½NE¼, SW¼NE¼, NW¼SE¼;
Sec. 12, W½NE¼, NW¼, NE¼SW¼, NW¼SE¼.

Containing 1,238.44 acres.

Whitney Benefits, Inc., owns the coal tract described above. In 1974, Whitney Benefits leased its mineral interest to Peter Kiewit Sons' Co. This lease gives Peter Kiewit the right to develop and mine the property in return for royalty payments to Whitney Benefits.

Development of the coal was halted by the passage of the Surface Mining Control and Reclamation Act of 1977. Section 510(b) of that Act prohibited all surface mining in alluvial valley floors significant to farming. In 1981, Whitney filed an exchange application under this provision of laws. On May 3, 1983, the State of Wyoming determined that the Whitney Benefits coal tract was part of "an alluvial valley floor" and was unminable. Whitney Benefits has filed two lawsuits against the United States seeking compensation for the coal declared unminable. It seeks monetary compensation in the claims court in *Whitney Benefits, Inc.* v. *United States*, No. 499–83 (Cl. Ct.), and it sought to complete and exchange in *Whitney Benefits, Inc.* v. *United States*, Civ. No. 84–193 (D. Wyo.). The Surface Mining Control and Reclamation Act's exchange provision requires the Secretary to conduct a fee for fee exchange with a private owner of coal under FLPMA's general exchange provisions. This exchange proposal will meet the Secretary's obligations in full, including both under the Federal Land Policy and Management Act and under the Surface Mining Control and Reclamation Act. Coal is the only portion of the fee title involved with this exchange.

The value of the coal interests to be exchanged, once the evaluation is completed, will be approximately equal. Full equalization of values, if necessary, will be in accordance with the regulations in 43 CFR 2201.3. Any patent issued will be subject to the following reservations, terms, and conditions:

The United States proposes to reserve all minerals except coal in the lands subject to this conveyance, including, without limitation, substances subject to disposition under the general mining laws, the general mineral leasing laws, the Materials Act and the Geothermal Steam Act.

The United States proposes to reserve to itself, its permittees, licensees, lessees and mining claimants, the right to prospect for, mine and remove the minerals owned by the United States under applicable law and such regulations as the Secretary of the Interior may prescribe. This reservation includes all necessary and incidental activities conducted in accordance with the provisions of the mining, geothermal and mineral leasing, and material disposal laws in effect at the time such activities are undertaken, including, without limitation, necessary access and exit rights, all drilling, underground, open pit or surface mining operations, storage and transportation facilities deemed necessary and authorized under law and implementing regulations.

The publication of this notice segregates the public lands described above from settlement, sale, location, and entry under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this notice will terminate upon issuance of patent or in 2 years, whichever occurs first. An environmental assessment and detailed information concerning the exchange will be available when completed from the Casper District Office, 951 North Poplar Street, Casper, Wyoming 82601. An economic evaluation of the offered and selected coal lands will be available when completed from the Chief, Northwestern Regional Evaluation Team, Bureau of Land Management, 2515 Warren Avenue, Cheyenne, Wyoming 82001.

For a period of 45 days from the date of this notice, interested parties may submit comments to the Casper District Manager, 951 North Poplar Street, Casper, Wyoming 82601. Any adverse comments will be evaluated by the Wyoming State Director, Bureau of Land Management, who may vacate or modify this realty action and issue a final determination. However, should the January 30 date arrive with no extension of time granted from the District Court or judicial stay of this order, the Bureau of Land Management intends to tender coal on January 30, 1986. Interested parties should be aware that the Department is under court order and should consider whether they wish to make their views known in the District Court action prior to January 30.

Hillary A. Oden,
State Director.

[FR Doc. 86–1445 Filed 1–22–86; 8:45 am]
BILLING CODE 4310–22–M

[OR910–GP6–079]

Proposed Plan Amendment and Environmental Assessment for an Area of Critical Environmental Concern, Medford District, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of proposed Plan amendment and environmental assessment for an area of critical environmental concern.

SUMMARY: Pursuant to section 202 (c)(3) and (f) of the Federal Land Policy and Management Act (FLPMA) and section 102(2)(c) of the National Environmenal Policy Act of 1969, the Bureau of Land Management has prepared a proposed Management Framework Plan Amendment and Environmental Assessment (EA) for a proposed Area of Critical Environmental Concern (ACEC) in the Medford District. The document addresses alternatives for the potential Eight Dollar Mountain ACEC on public lands within the Medford District in southwestern Oregon. Interim management assures that important resources of this potential ACEC are protected pending the designation decision. This document was made available for public review and comment from October 18, 1985, to December 20, 1985. The comment period for public review of this document has been reopened. There are no changes in the issued document.

A limited number of documents are available upon request from the BLM Medford District Office.

Written comments should be sent by March 31, 1986 to: District Manager, Attention: Mike Walker, Environmental Specialist, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504.

FOR FURTHER INFORMATION CONTACT: Mike Walker, Environmental Specialist Medford District Office, Telephone (503) 776–4604.

SUPPLEMENTARY INFORMATION:

Reference the Federal Register, Vol. 50, No. 202, Friday, October 18, 1986, pages 42229–42230 for an identification of the planning process, analysis area, issues, alternatives, and preferred alternative.

Dated: January 13, 1986.

Hugh R. Shera,

Medford District Manager.

[FR Doc. 86–1367 Filed 1–22–86; 8:45 am]

BILLING CODE 4310–33–M

[W–84110; 6–00164–GP6–0049]

Wyoming; Proposed Reinstatement of Terminated Oil and Gas Lease

January 13, 1986.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W–84110 for lands in Converse County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16–⅔ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–84110 effective June 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 86–1377 Filed 1–22–86; 8:45 am]

BILLING CODE 4310–22–M

[W–45780; 6–00164–GP6–0047]

Wyoming; Proposed Reinstatement of Terminated Oil and Gas Lease

January 13, 1986.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W–45780 for lands in Washakie County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $7.00 per acre, or fraction thereof, per year and 16–⅔ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–45780 effective August 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 86–1374 Filed 1–22–86; 8:45 am]

BILLING CODE 4310–22–M

Research Natural Areas; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Final Designation of Granite Mountains Research Natural Area and Review of Draft Cooperative Mangement Agreement.

SUMMARY: Under authority of the 43 CFR Parts 1600 and 8223 regulations, and pursuant to the stated intent of the California Desert Plan, this announcement completes the designation requirements of the Granite Mountains Research Natural Area. The Granite Mountains Research Natural Area consists of approximately 6,720 acres of public lands located as follows:

San Bernardino Base and Meridian, T. 8 N., R. 12 E., Sections 2 (excluding MS 6553), 11, 12, 13, and 14; T. 8 N., R. 13 E., Sections 6, 7, 8, and 18 (N½); T. 9 N., R. 12 E., Sections 35; and T. 9 N., R. 13 E., Sections 31.

The area was officially identified for designation as a Research Natural Area in the December 1980 *California Desert Plan.* The designation was intended to recognize and provide specific management protection for this unique area. The subject lands possess exceptionally diverse plant and animal communities which have received extensive educational and research use for many years. The area will remain available to the public for nonmotorized uses, primarily education, research, and nature study, and will be managed under a cooperative agreement between the BLM and the Regents of the University of California.

EFFECTIVE DATE: The public review period for the draft Cooperative Management Agreement will end 45 days from the date of this Notice. Copies of the draft management agreement are available for public review at the Needles Research Area Office at 901 Third Street, Needles, California, and at the California Desert District Office at 1695 Spruce Street, Riverside, California.

FOR FURTHER INFORMATION CONTACT: Everell Hayes in Needles at (619) 326–3896, or Wes Chambers in Riverside at (714) 351–6402.

Dated: January 15, 1986.

H.W. Riecken,

Acting District Manager.

[FR Doc. 86–1446 Filed 1–22–86; 8:45 am]

BILLING CODE 4310–40–M

National Park Service

Intention To Negotiate Concession Contract; Shields and Dean Concessions, Inc.

Pursuant to the provisions of section 5 of the Act October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Shields and Dean Concessions, Inc. authorizing it to continue to provide recreational facilities and services for the public at Gateway National Recreation Area, New York for an period of TEN (10) years from January 1, 1985 through December 31, 1994.

An assessment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that is is not a major Federal action having significant impact on the environment funder the National Environmental Policy Act of 1969. The environmental assessment and finding of no significant impact may be reviewed in the Office of the Superintendent, Gateway Recreation Area.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on December 31, 1984, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR § 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, North Atlantic Region, Boston, Massachusetts 02109, for information as to the requirements of the proposed contract.

Dated: December 5, 1985.

Steven H. Lewis,

Acting Regional Director, North Atlantic Region.

[FR Doc. 86-1450 Filed 1-22-86; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30740]

Alaska Railroad Corporation—Exemption—From 49 U.S.C. Subtitle IV

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the Alaska Railroad Corporation from the requirements of 49 U.S.C. Subtitle IV that otherwise might apply, except those at 49 U.S.C. 10909; exercise of our jurisdiction with respect to such operations will be specifically limited to section 10909.

This exemption will be effective January 23, 1986. Petitions to reopen must be filed by February 12, 1986.

ADDRESSES: Send pleadings referring to Finance Docket No. 30740 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission Washington, DC 20423

(2) Petitioner's representative: B. Gerald Johnson, Wickwire, Lewis, Goldmark & Schorr, 500 Maynard Building, Seattle, WA 98104

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. Infosystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 298-4357 (DC Metropolitan area), or toll-free 800-424-5403.

Decided: December 31, 1985.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Taylor, Sterrett, Andre, Lamboley and Strenio. Commissioner Lamboley dissented with a separate expression. Commissioners Taylor and Strenio did not participate.

James H. Bayne,

Secretary.

[FR Doc. 86-1418 Filed 1-22-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 3-86]

Privacy Act of 1974; New Routine Uses

Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a(e)(4) and (11), the Department of Justice, United States Parole Commission (USPC), proposes to modify its "Inmate and Supervision Files, JUSTICE/PRC-003" system which was last published on December 19, 1984 (49 FR 49394). Specifically, the USPC has eliminated three routine uses previously identified as "b," "e," and "i"; and has rewritten for clarification purposes only, three routine uses now identified as "b," "e," and "g." (All of the routine uses have been relettered sequentially.) In addition, it has added the following new routine uses:

(j) Records which are arguably relevant to litigation in which the Parole Commission has an interest, or to the litigation defense of its present or former employees (if the Department of Justice has agreed to provide representation) may be disclosed from a current or former inmate's or parole's file by disseminating in proceedings before a court or tribunal at any time deemed appropriate by the Government's attorney.

(k) A record from this system of records may be disclosed to a current or former criminal justice official who is a defendant in a lawsuit brought by, or which involves, an individual who is the subject of a file maintained in this system of records, provided that such litigation arises from allegations of misconduct on the part of the defendant while a criminal justice official, and that the records are arguably relevant to the matter in litigation. Such records may be disclosed to the defendant to facilitate the preparation of his or her defense.

(l) Records from this system may be disclosed to any person performing any service for the USPC pursuant to authority exercised by the Chairman under 18 U.S.C. 4204(b) (1) through (8), and for the purposes contemplated by that statute.

Title 5 U.S.C. 552(e) (4) and (11) provide that the public be given a 30-day period in which to comment on new routine uses. You may submit any inquiries or comments in writing to J. Michael Clark, Acting Assistant Director, General Services Staff, Justice Management Division, Department of Justice, Room 9002, 601 D Street, NW, Washington, D.C. 20530. All comments must be received by February 24, 1986.

Since the routine uses are compatible with the purpose for which the system is maintained, the Department is not required to submit a report to the Office of Management and Budget and the Congress. The amended system is reprinted below.

Dated: January 9, 1986.

W. Lawrence Wallace,

Assistant Attorney General for Administration.

JUSTICE/PRC 003

SYSTEM NAME:

Inmate and Supervision Files.

SYSTEM LOCATION:

Records are maintained at each of the U.S. Parole Commission's (USPC)

Regional Offices for inmates incarcerated in and persons under supervision in each region. Records are housed temporarily at the Commission's Headquarters Office located at 5550 Friendship Blvd., Chevy Chase, Md. 20815 when used by the National Appeals Board or other Headquarters personnel. A duplicate record of certain data elements from files is maintained on microfiche for Headquarters use. Prior to the first parole hearing, the inmate's file is maintained at the instituting at which he is incarcerated. Certain records on parolees and mandatory releasees are maintained at probation offices. All requests for records should be made to the appropriate regional office at the following addresses: U.S. Parole Commission. Customs House, Seventh Floor Second and Chestnut Streets, Philadelphia, Pa. 19106. U.S. Parole Commission, 1718 Peachtree St., N.W. Suite 250, Atlanta, GA 30309 U.S. Parole Commission, Air World Center, Suite 220, 10920 Ambassador Drive, Kansas City, Mo. 64153. U.S. Parole Commission 525 Griffin Square, Suite 820, Dallas, Tex. 75202. U.S. Parole Commission, 330 Primrose Drive, Fifth Floor, Burlingame, Calif. 94010.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former inmates under the custody of the Attorney General. Former inmates include those presently under supervision as parolees or mandatory releases.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Compulation of sentence and supportive documentation.
2. Correspondence concerning pending charges, and wanted status, including warrants.
3. Requests from other Federal and non-Federal law enforcement agencies for notification prior to release.
4. Records of the allowance, forfeiture, withholding and restoration of good time.
5. Information concerning present offense, prior criminal background sentence, and parole from the U.S. Attorneys, the Federal Courts, and Federal prosecuting agencies.
6. Identification Data.
7. Order of designation of institution or original commitment.
8. Records and reports of work and housing assignments.
9. Program selection, assignments and performance adjustments/progress reports.
10. Conduct records.
11. Social background.
12. Educational data.
13. Physical and mental health data.
14. Parole Commission applications, appeal documentation, orders, actions, examiner's summaries, transcripts or tapes of hearings, guideline evaluation documents, parole or mandatory release certificates, statements or third parties for or against parole, special reports on youthful offenders and adults required by statute and related documents.
15. Correspondence regarding release planning, adjustment and violations.
16. Transfer orders.
17. Mail and visit records.
18. Personal property records.
19. Safety reports and rules.
20. Release processing forms and certificates.
21. Interviews request forms from inmates.
22. General correspondence.
23. Copies of inmate court petitions and other court documents.
24. Reports of probation officers, Commission correspondence with former inmates and others, and Commission order and memoranda dealing with supervision and conditions of parole or mandatory release.
25. If an alleged parole violation exists, correspondence requesting a revocation warrant, warrant application, warrant, instructions as to service, detainers and related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

18 U.S.C. 4201–4218, 5005–5041, 28 CFR Part O, Subpart V, and 28 CFR Part 2.

PURPOSE (S):

The system constitutes the agency's records upon which it bases all its decisions with respect to every stage of parole consideration form initial hearing to termination of parole supervision. For example, it is used by USPC hearing examiners to perform a per-hearing review and to conduct the inmate's initial parole hearing. After that hearing, it is maintained in the appropriate regional office where it provides the principal information source for all decisions leading to parole or denial of parole, and all decisions following release to supervision. It is used at USPC headquarters when appeals come before the National Appeals Board or when needed by legal counsel and others on the headquarters staff. It is used by employees at all levels, including USPC members, to provide information for decision-making in every area of USPC responsiblity. Files of released inmates are used to make statistical studies of subjects related to parole and revocation. Finally, the file is maintained to provide the rationale of USPC actions when an agency determination is questioned by members of the public or challenged in judicial proceedings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

(a) The system may be used as a source for disclosure of information which is solely a matter of public record and which is traditonally released by the agency to further public understanding of its criminal justice system, including but not limited to offense, sentence data, and prospective releasae date.

(b) The system may be used to provide an informational source for responding to inquiries from Federal inmates, their families, representatives, and Congressional offices.

(c) Record from the system of records may be routinely disclosed to U.S. Probation Officers for the performance of their official duties.

(d) In the event that the USPC is informed of a violation or suspected violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records may be disclosed to the appropriate agency, whether Federal, State local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order, issued pursuant thereto

(e) Records from this system may be disclosed to a Federal, State or local agency or court if that agency or court requests information for an official purpose to which the documents appear to be relevant.

(f) A record from this system may be disclosed to a person or to persons who may be exposed to harm thorugh contact with a particular parolee or mandatory releasee (or to persons in a position to prevent or minimize such harm), if it is deemed to be necessary to give notice that such danger exists.

(g) Lists of names of parolees and mandatory releasees entering a juridiction and related information may be disclosed to law enforecement agencies upon request as may be required for the protection of the public for the enforcement of parole conditions.

(h) Disclosure of USPC notices of action may be made (1) by the Office of Public Affairs of the U.S. Department of Justice to the public generally, and (2) by USPC to specific crime victims and witnesses (as those terms are used in the Victim and Witness Protection Act

of 1982), from the files of prisoners whose applications for parole have been decided by USPC. The purpose of such disclosure is to further understanding of the criminal justice systme by the public and by crime victims and witnesses.

(i) Incidental disclosure of file material may be made during the course of a parole or parole revocation hearing to victims and witnesses of crime and other legitimately interested persons authorized by USPC to attend such hearing, so as to further their understanding of the case to permit their intelligent comment with respect to USPC's decision. Justice official, and that the records are arguably relevant to the matter in litigation. Such records are disclosed to the defendant to assist in the preparation of his her defense.

(j) Records which are arguably relevant to litigation in which the Parole Commission has an interest, or to the litigation defense of its present or former employees (if the Department of Justice has agreed to provide representation) may be disclosed from a current or former inmates's or parolee's file by disseminating in proceedings before a court or tribunal at any time deemed appropriate by the Government's attorney.

(k) A record from this system of records may be disclosed to a current of former criminal justice official who is a defendant in a lawsuit brought by, or which involves, an individual who is the subject of a file maintained in this system of records, provided that such litigation arises from allegations of misconduct on the part of the defendant while a criminal justice official, and that the records are argulably relevant to the matter in litigation. Such records may be disclosed to the defendant to facilitate the preparation of his or her defense.

(l) Records from this system may be disclosed to any person performing any service for the USPC pursuant to authority exercised by the Chairman under 18 U.S.C. 4204(b) (1) through (8), and for the purposes contemplated by that statute.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO MEMBER OF CONGRESS:

Information contained in systems of records maintained by the Department of Justice, nor otherwise required to be released pursuant to 5 U.S.C. 532, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

RELEASE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION:

A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual requests records are stored in locked safes. Automated requests records are stored on disks.

RETRIEVABILITY:

Requests reports are filed and retrieved under the names of those persons and individuals identified under the caption "Categories of individuals covered by the system. These records are retrieved by Department personnel to perform their duties, e.g., when subsequent requests are made by the public for copies of their previous requests and responses thereto, or when the requester submits a supplemental request to information clarifying a previous request.

SAFEGUARDS:

Access to requests records is limited to Department of Justice personnel who have need for the records to perform their duties. Request files (manual records) are stored in locked safes. All records are stored in an office which is occupied during the day and locked at night.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with items 16 through 18 and 25 through 28 of General Records Schedule 14.

SYSTEM MANAGER(S) AND ADDRESS:

Herman Levy, Attorney-Management Analyst, United States Parole Commission, 5550 Friendship Blvd., Chevy Chase, Md. 20815.

NOTIFICATION PROCEDURE:

Address inquiries to Regional Commissioner at appropriate location. For general inquiries, address system Manager. The Attorney General has exempted this system from compliance with the provisions of Subsection (d) under the provisions of Subsection (j).

RECORD SOURCE CATEGORIES:

1. Individual inmate: 2. Federal law enforcement agencies and personnel; 3. State and Federal probation services; 4. Non-Federal law enforcement agencies; 5. Educational institutions; 6. Hospital or medical sources; 7. Relatives, friends and other interested individuals or groups in the community; 8. Former or future employers; 9. Evaluations, observations, reports and findings of institution supervisors, counselors, boards and committees, Parole Commission examiners, Parole Commission Members; 10. Federal court records; 11. U.S. Bureau of Prisons personnel and records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4), (d)(e) (2) and (3), (e)(4) (G) and (H), (e)(8) (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register.**

[FR Doc. 86-1368 Filed 1-22-86; 8:45 am]
BILLING CODE 4410-01-M

LEGAL SERVICES CORPORATION

Grant Award Announcement

AGENCY: Legal Services Corporation.

ACTION: Notice.

SUMMARY: The Legal Services Corporation (LSC) announces its intention to award a grant of $175,138, in calendar year 1986, to the Monterey County Legal Services Corporation for the provision of legal services to eligible clients residing in Monterey County, California.

DATE: All comments and recommendations must be received by the Office of Field Services/Grants and Budget Unit of the Legal Services Corporation within thirty (30) calendar days of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Leslie Q. Russell, Program Development and Substantive Support Unit, Office of Field Services, Legal Services Corporation, 400 Virginia Avenue, SW., Washington, DC, 20024-2751; (202) 863-1837.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation, the national, independent organization charged with implementing the federally-funded system of legal services for low income people, announces its intention to award a grant of $175,138 to the Monterey County Legal Services Corporation for the provision of legal services to eligible clients residing in Monterey County, California.

The annualized level of Legal Services Corporation funding for the service area is approximately $191,000 for calendar year 1986.

Interested persons are hereby invited to submit written comments or recommendations concerning the above action to: Legal Services Corporation, Office of Field Services, 400 Virginia Avenue, SW., Washington, DC 20024–2751, (202) 863–1837. Attention: Leslie Q. Russell.

Dated: January 17, 1986.

James H. Wentzel,

President.

[FR Doc. 86–1423 Filed 1–22–86; 8:45 am]

BILLING CODE 6820–35–M

Grant Award to the National Legal Center for the Medically Dependent and Disabled, Inc.; Notice and Request for Comments

AGENCY: Legal Services Corporation.

ACTION: The Legal Services Corporation (LSC) announces that it is considering awarding a one-time, three (3) month grant of $105,000 in 1986 to the National Legal Center for the Medically Dependent and Disabled, Inc. of Indianapolis, Indiana, to provide legal support services related to issues of the treatment of critically or terminally ill handicapped and medically dependent persons.

DATE: All comments and recommendations must be received by the Office of Field Services/Program Development and Substantive Support Unit within thirty (30) calendar days of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Legal Services Corporation, Michael M. Losavio, Assistant Manager, OFS/PDSS, 400 Virginia Avenue, SW., Washington, DC 20024–2751, (202) 863–1837.

SUPPLEMENTARY INFORMATION: The National Legal Center is a not-for profit public organization which focuses primarily on the medical and legal issues in the treatment of the critically or terminally ill handicapped and medically dependent persons. Under the direction of established legal experts in this field, the National Legal Center will utilize the combined efforts and skills of legal and medical scholars, members of the bar, and client representatives to provide assistance and training to legal services lawyers in this area.

The National Legal Center offers comprehensive support services to the legal services community that are designed to assist legal services attorneys in every stage of the litigation process and to keep them abreast of rapidly changing developments in this complex field. These services include: (1) Technical assistance in the form of legal research, preparation of appellate briefs, consulation on litigation strategy, and the development and maintenance of an expert witness talent bank; and (2) informational assistance in the form of a bimonthly publication, training conferences, and litigation manuals that contain up-to-date materials on recent court rulings and federal and state statutes and regulations.

Interested persons are also invited to submitt written comments and/or recommendations concerning this intended grant action to Michael Mr. Losavio.

Dated: January 14, 1986.

James H. Wentzel,

President, Legal Services Corporation.

[FR Doc. 86–1458 Filed 1–22–86; 8:45 am]

BILLING CODE 6820–35–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 86–06]

NASA Advisory Council (NAC), Space and Earth Science Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of an informal planning subgroup of the NAC Space and Earth Science Advisory Committee (SESAC).

DATE AND TIME: February 17, 1986, 9 a.m. to 5 p.m.; February 18, 1986, 9 a.m. to 3 p.m.

ADDRESS: Lunar and Planetary Institute, 3303 NASA Road 1, McGetchin Hall Conference Room, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey D. Rosendhal, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–1410).

SUPPLEMENTARY INFORMATION: The NAC Space and Earth Science Advisory Committee consults with and advises the Council and NASA on plans for, work in progress on, and accomplishments of NASA's Space and Earth Science programs. The committee, chaired by Dr. Louis Lanzerotti, operates both through a number of informal subgroups and as a whole. This informal planning subgroup is responsible for addressing the question of "what is required to maintain the vitality of the space sciences". The meeting will be open to the public up to the seating capacity of the room (approximately 15 persons, including committee members and other participants).

Type of meeting: Open.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

January 16, 1986.

[FR Doc. 86–1380 Filed 1–22–86; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by February 14, 1986.

ADDRESSES: Send comments to Ms. Judy McIntosh, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3201, Washington, D.C. 20503; (202–395–6880). In addition, copies of such comments may be sent to Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5464).

FOR FURTHER INFORMATION CONTACT: Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506 (202–682–5464) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The National Endowment for the Arts requests reinstatement of a previously approved public use report. This entry issued by the Endowment contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filed out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form.

Title: Letter of Credit Forms
Form Number: SF 1194, TFS 5805
Frequency of Collection: As funds are needed.
Respondents: State or local governments, Non-profit institutions
Use: To make grant payment to grant recipient
Estimated Number of Respondents: 174
Estimated Hours for Respondents to Provide Information: 625.

Peter J. Basso,
Director of Administration, National Endowment for the Arts.

[FR Doc. 86-1431 Filed 1-22-86; 8:45 am]
BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological, Behavioral, and Social Sciences; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Biological, Behavioral, and Social Sciences (BBS).
Date and time: February 10 and 11, 1986; 9:00 a.m. to 5:00 p.m.
Place: Room 1242B, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.
Type of meeting: Open.
Contact person: Dr. David T. Kingsbury, Assistant Director, Biological, Behavioral, and Social Sciences, (202) 357-9854, Room 506, National Science Foundation, Washington, DC 20550.
Summary of minutes: May be obtained from the contact person.
Purpose of advisory committee: The Advisory Committee for BBS provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BBS.
Agenda: Discussion of BBS directorate-wide priorities and planning activities; mode of committee operation regarding expanded committee responsibility in the area of review of biotechnology-related environmental research; and plans for subsequent meetings of the committee.

Dated: January 17, 1986.
M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 86-1424 Filed 1-22-86; 8:45 am]
BILLING CODE 7555-01-M

Advisory Panel for Cell Biology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Cell Biology.
Date and time: February 12, 13, 14, Wednesday, Thursday, and Friday, 1986, starting at 9:00 a.m. to 5:00 p.m.
Place: Room 1141, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.
Type of meeting: Closed.
Contact person: Dr. Arnold Kaplan, Program Director, Cell Biology Program, Room 332-G, National Science Foundation, Washington, DC 20550, Telephone: 202/357-7474.
Purpose of advisory panel: To provide advice and recommendations concerning support of research in cell biology.
Agenda: To review and evaluate research proposals as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: January 17, 1986.
M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 86-1425 Filed 1-22-86; 8:45 am]
BILLING CODE 7555-01-M

Advisory Panel for Eukaryotic Genetics Program; Meeting

In accordance with the Federal Advisory Panel Act, as amended, Pub. L. 92 463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Eukaryotic Genetics.
Date and time: Wednesday, February 12, 1986 from 8:30 am to 5:00 pm; Thursday and Friday, February 13, 14, 1986 from 8:30 am to 5:00 pm
Place: Room 1242A, National Science Foundation, 1800 G Street, NW, Washington, DC 20550.
Type meeting: Closed.
Contact person: DeLill Nasser, Program Director, Eukaryotic Genetics, Room 329G Telephone: 202/357-0112.
Purpose of Advisory Panel: To provide advice and recommendations concerning support for research.
Agenda: To review and evaluate research proposals as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary of confidential nature, including technical information: financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of proposals U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. Panel Management Officer was delegated the authority to make such determinations by the Director, NSF on July 6, 1979.

Dated: January 17, 1986.

[FR Doc. 86-1426 Filed 1-22-86 8:45 am]
BILLING CODE 7555-01-M

NSF Advisory Committee on Merit Review: Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: NSF Advisory Committee on Merit Review.
Date and time: Monday, February 10, 1986—9:00-4:00.
Place: American Association for the Advancement of Science, Board Room—Tenth Floor, 1333 H Street NW., Washington, D.C. 20005.
Type of meeting: Open.
Contact person: Dr. Carlos Kruytbosch, Head, Science Indicators Unit National Science Foundation, 1800 G Street, NW., Washington, DC 20550 (202) 634-4682.
Anyone planning to attend this meeting should notify Dr. Kruytbosch.
Summary minutes: Dr. Carlos Kruytbosch, National Science Foundation, 1800 G Street NW., Room L-611, Washington, D.C. 20550.
Purpose of committee: To evaluate merit review as practiced by NSF and other agencies and provide its advice and recommendations concerning alternative systems of merit review and selection of project.
Summarize agenda: Committee will outline its final report.

Dated: January 17, 1986.
M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 86-1427 Filed 1-22-86; 8:45 am]
BILLING CODE 7555-01-M

Advisory Committee for Polar Programs; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Polar Programs.

Date and time: February 12, 1986, 8:30 a.m.–8:00 p.m. February 13, 1986, 8:30 a.m.–5:00 p.m. February 14, 1986, 8:30 a.m.–12:00 noon.

Place: Room 540, National Science Foundation, 1800 G. Street, NW., Washington, DC 20550.

Type of meeting: Closed—February 12, 10:00 a.m.–8:00 p.m. February 13, 8:30 a.m.–12:00 noon.

Open—February 12, 8:30 a.m.–10:00 a.m. February 13, 1:00 p.m.–5:00 p.m. February 14, 8:30 a.m.–12:00 noon.

Contact person: Dr. Peter E. Wilkniss, Division Director, Division of Polar Programs, Room 620, National Science Foundation, Washington, DC 20550. Telephone: 202/357–7766.

Purpose of Committee: Serves to provide expert advice to the U.S. Antarctic Program and the Arctic Program, including advice on polar operations support, budgetary planning, polar coordination and information, and science programs.

Agenda:

February 12

—8:30 a.m.–10:00 a.m.—NSF/DPP Overview, Installation of Chairperson
—10:00 a.m.–8:00 p.m.—Review of Polar Glaciology Program

February 13

—8:30 a.m.–12:00 noon—Review of Polar Glaciology Program
—1:00 p.m.–5:00 p.m.—Polar Operations Briefing, NSB Review Briefing

February 14

—8:30 a.m.–12:00 noon—Arctic Research Briefing

Reason for closing: The meeting will deal with a review of grants and declinations in which the Committee will review materials containing the names of applicant institutions and principal investigators and privileged information contained in declined proposals. This meeting will also include a review of peer review documentation pertaining to applicants. Any non-exempt materials that may be discussed at this meeting (proposals that have been awarded) will be inextricably intertwined with the discussion of exempt materials and no further separation is practical. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, National Science Foundation, on July 6, 1979.

Summary minutes: May be obtained from Contact Person.

Dated: January 17, 1986.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 86–1428 Filed 1–22–86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–155]

Consumers Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an exemption from the requirements of 10 CFR 50.62(c)(5) to Consumers Power Company (CPC) (the licensee) for the Big Rock Point Plant located at the licensee's site in Charlevoix County, Michigan.

Environmental Assessment

Identification of the Proposed Action

The exemption would exempt the licensee from the requirement to have equipment to trip the reactor coolant recirculating pumps automatically under conditions indicative of an anticipated transient without scram (ATWS). The proposed exemption is in accordance with the licensee's request dated October 14, 1985.

The Need for the Proposed Action

10 CFR 50.62(c)(5) requires that all licensees of boiling water reactors have equipment to trip the reactor coolant recirculating pumps automatically under conditions indicative of an ATWS. The licensee has proposed to not install equipment in the Big Rock Point Plant which would provide the automatic recirculating pump trip (RPT) feature. The basis for this exemption is provided in analyses and studies performed by CPC which show that, due to the unique facility design, the automatic RPT, during an ATWS event provides little risk reduction potential.

Environmental Impacts of the Proposed Action

The proposed exemption pertains to the installation of equipment providing an automatic RPT. Granting the exemption would not require any facility modifications. The licensee has performed a Probabilistic Risk Assessment (PRA) submitted to the Commission on February 26, 1981, which concludes that the probability of core damage and subsequent radioactive release with an automatic RPT during an ATWS event is approximately 2.7×10^{5}/reactor-year. The change in core melt probability associated with the addition of an automatic RPT is very small and the licensee has concluded that an automatic RPT is not cost effective estimated at $93,000/person-rem saved. The NRC staff has evaluated CPC's PRA, and has concluded that the automatic RPT modification would save only approximately 4 person-rem/reactor-year. This difference in risk associated with not installing the automatic RPT equipment is, therefore, insignificant. On this basis, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption does not affect plant nonradiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no significant radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative to the exemption would be to require the installation of equipment providing an automatic RPT. Such actions would not significantly enhance the protection of the environment and would result in diversion of utility engineering resources from other work of higher safety significance.

Alternative Use of Resources

This action does not involve the use of resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated October 14, 1985. This letter is available for public inspection at the

Commission's Public Document Room, 1717 H Street, NW., Washington, DC., and at North Central Michigan College, 1515 Harvard Street, Petoskey, Michigan 49770.

Dated at Bethesda, MD, this 13th day of January 1986.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, BWR Project Directorate No. 1, Division of BWR Licensing.

[FR Doc. 86-1465 Filed 1-22-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-446]

Texas Utilities Generating Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an Exemption from a portion of the requirements of General Design Criterion 4 (10 CFR Part 50, Appendix A) to the Texas Utilities Generating Company (the applicant) for the Comanche Peak Steam Electric Station, Unit 2, located at the applicant's site in Somervell/Hood Counties, Texas, approximately 40 miles southwest of Fort Worth, Texas.

Environmental Assessment

Identification of Proposed Action

The Exemption would eliminate the requirement to provide protection on Comanche Peak, Unit 2 from the dynamic effects associated with postulated pipe breaks in eight locations per loop in the primany coolant system. The acceptance of the exemption was made possible by the development of advanced fracture mechanics technology which deal with relatively small flaws in piping components. The behavior or these flaws was examined by deterministic analyses. These advanced techniques, with the resulting improved knowledge of failure modes of piping systems, show that inservice inspection and leakage monitoring systems can reduce the probability of catastrophic failure to insignificant values.

Need for Proposed Action

The applicant requested approval for elimination of the requirements for protection from the dynamic effects associated with postulated pipe breaks in the primary loop piping for Unit 2. The request included, for these postulated primary loop pipe breaks: (1) The elimination of the need to design for pipe whip, jet impingement and asymmetric effects of cavity pressurization; (2) the elimination of the need to install pipe whip restraints (including shims) and jet impingement shields; and (3) the elimination of the need to include the loads and displacement effects of these posulated primary loop pipe breaks in the design of the reactor coolant system branch piping. General Design Criterion (GDC) 4 requires that structures, systems and components important to safety shall be appropriately protected against dynamic effects, including the effects of missiles, pipe whipping and discharging fluids that may result from equipment failures, up to and including a double-ended rupture of the largest pipe in the reactor coolant system (Definition of LOCA). thus, a partial exemption to the requirements of GDC 4 is required for the elimination of these pipe whip restraints and jet shields.

In earlier submittals the applicant has provided information to show by advanced fracture mechanics techniques that the detection of small flaws by either inservice inspection or leakage monitoring systems is assured long before flaws in the piping materials can grow to critical or unstable sizes which could lead to large break areas such as the double-ended gillotine break or its equivalent. The NRC staff has reviewed and accepted the applicant's conclusion. Therefore, the NRC staff agrees that the double-ended gillotine break in the primary pressure coolant loop piping need not be required as a design basis accident for protection against dynamic effects such as pipe whip, jet impingement, asymmetric effects of cavity pressurization and LOCA loads and displacement effects; i.e., pipe whip restraints (including shims) and jet impingement shields are not needed. Accordingly the NRC staff agrees that an exemption from GDC 4 is appropriate.

Environmental Impact of the Proposed Action

The proposed Exemption would not alter earlier NRC staff conclusions concerning the environmental impact of a postulated design-basis LOCA for Comanche Peak. In the staff's evaluation of the radiological consequences of the design-basis LOCA (Section 15.4.5 of the SER, NUREG-0797, July 1981), no credit was given for the pipe whip restraints or jet shields to be eliminated in calculating accident doses to the environment. While the pipe whip restraints and jet impingement shields would minimize the damage from pipe whipping or jet impingement forces from a broken pipe, the calculated limitation on stresses required to support this Exemption assures that the probability of pipe breaks which could give rise to such forces are extremely small; thus, on balance, elimination of the pipe whip restraints and jet impingement shields would have no significant effect on overall plant accident risk.

The Exemption does not otherwise affect radiological plant effluent. The Exemption involves design features located entirely within the restricted area as defined in 10 CFR Part 20. The elimination of the Unit 2 pipe whip restraints and jet impingement shields woud tend to lessen the occupational doses to workers inside containment. Accordingly, ALRRA principles would favor elimination of the restraints and shields. Therefore, the Commission concludes that there are no significant negative radiological impacts associated with this Exemption.

The Exemption does not affect plant non-radioactive effluents and has no other environmental impact. Therefore, the Commission concludes that there are no negative non-radiological impacts associated with this proposed Exemption.

Since the NRC has concluded that there are no significant negative environmental impacts associated with this Exemption, there are no other alternatives wich would result in significantly less environmental impact than granting the proposed Exemption. Literal compliance with GDC 4 is the only alternative to the Exemption that has been identified by the NRC staff.

Alternative Use of Resources

This action does not involve the use of resources not previously condidered in the Final Environmental Statement (construction permit and operating license) for Comanche Peak, Units 1 and 2.

Agencies and Persons Contacted

The NRC staff reviewed the applicant's request and applicable documents referenced therein that support this Exemption for Comanche Peak, Unit 2. The NRC did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for this action. Based upon the environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the request for exemption dated October 31, 1983 and additional information provided by the applicant in letters dated April 23, 1984 (2), June 7, 1984, March 12, 1985 and July 15, 1985.

These documents, utilized in the NRC staff's technical evaluation of the exemption request, are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Local Public Document Room at the Somervell County Public Library, P.O. box 417, Glen Rose, Texas 76403.

Dated: at Bethesda, MD, this 15 day of January 1986.

For the Nuclear Regulatory Commission.

Charles M. Trammell,

Acting Director, PWR Project Directorate No. 5, Division of PWR Licensing—A.

[FR Doc. 86-1466 Filed 1-22-86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Specialty Steel and Alloy Tool Steel Products; Import Quotas and Exclusions

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice establishes country allocations of the quotas presently applicable to imports of certain stainless steel and alloy tool steel products and makes modifications in the Tariff Schedules of the United States to implement changes in the import relief program. The notice provides separate allocations within the stainless steel bar, stainless steel rod, and the alloy tool steel categories for Brazil, within the stainless bar and the alloy tool steel categories for Mexico, and within the stainless steel bar category for the Republic of Korea.

EFFECTIVE DATE: January 20, 1986.

FOR FURTHER INFORMATION CONTACT: Marie Haugen, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, (202) 377-4036.

SUPPLEMENTARY INFORMATION: Presidential Proclamation 5074 of July 19, 1983 (48 FR 33233), provided for the temporary imposition of increased tariffs and quantitative restrictions on certain stainless steel and alloy tool steel products imported into the United States, pursuant to section 203 of the Trade Act of 1974. Proclamation 5074 authorizes the U.S. Trade Representative to take such actions and perform such functions for the United States as may be necessary to administer and implement the relief, including negotiating orderly marketing agreements and allocating quota quantities on a country-by-country basis. The U.S. Trade Representative is also authorized to make modifications in the Tariff Schedules of the United States (TSUS) headnote or items proclaimed by the President in order to implement such actions.

Pursuant to the above authority, the U.S. Trade Representative has determined that the quota quantities should be reallocated to provide country allocations for certain steel products for Brazil, Mexico, and the Republic of Korea.

In conformity with the above, subpart A, part 2 of the Appendix to the TSUS is modified as follows:

(1) Item 926.12 is modified to add to the country allocations, in alphabetical order, "Brazil", "Mexico", and "The Republic of Korea", and also to add corresponding quota quantities of "570" short tons, "40" short tons, and "450" short tons, respectively, for the period January 20, 1986 though April 19, 1986. Item 926.12 is further modified by changing the quota quantity for "Other" countries to "1,117" short tons for the period January 20, 1986 through April 19, 1986.

(2) Item 926.17 is modified to add "Brazil" to the country allocations, and also to add a corresponding quota quantity of "330" short tons for the period January 20, 1986 through April 19, 1986. Item 926.17 is further modified by changing the quota quantity for "Other" countries to "1,897" short tons for the period January 20, 1986 through April 19, 1986.

(3) Item 926.22 is modified to add to the country allocations, in alphabetical order, "Brazil", and "Mexico", and also to add corresponding quota quantities of "270" short tons and "75" short tons, respectively, for the period January 20, 1986 through April 19, 1986. Item 926.22 is further modified by changing the quota quantity for "Other" countries to "1,591" short tons for the period January 20, 1986 through April 19, 1986.

Clayton Yeutter,

United States Trade Representative.

[FR Doc. 86-1366 Filed 1-22-86; 8:45 am]

BILLING CODE 3190-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Production Planning Advisory Committee; Meeting Notice

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Production Planning Advisory Committee to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Genetic policies and principles.
- Outplanting and supplementation.
- Goals update.
- Site ranking update.
- Production objectives/subbasin planning update.
- Research issues update.
- Other.
- Public comment.

DATE: January 28, 1986. 9:30 a.m.

ADDRESS: The meeting will be held in the Council's meeting room, 850 S.W. Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Ron Eggers, 503-222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 86-1381 Filed 1-22-86; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension of Approval

Regulation S-k.
No. 270-2.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for extension of OMB approval Regulation S-K (17 CFR Part 229), Standard instructions for filing forms under Securities Act of 1933, Securities Exchange Act of 1934 and Energy Policy and Conservation Act of 1975. The number of affected entities are approximately 21,000 per year.

Submit comments to OMB Desk Officer: Ms. Sheri Fox (202) 395-3795, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Shirley E. Hollis,

Assistant Secretary.

January 16, 1986.

[FR Doc. 86-1454 Filed 1-22-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

January 15, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities;

Ames Department Stores, Inc.
Common Stock, $.50 Par Value (File No. 7-8764)
Diamond Shamrock Offshore Partners, Ltd.
Units of Limited Partnership Interest (File No. 7-8765)
Revco D.S., Incorporated
Common Stock, $1.00 Par Value (File No. 7-8766)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 3, 1986, written data, views and arguments concerning the above referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-1453 Filed 1-22-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02-0486]

First New York Small Business Investment Co.; Issuance of a Small Business Investment Company License

On July 26, 1985, a notice was published in the **Federal Register** (50 FR 30556) stating that an application has been filed by First New York Small Business Investment Company with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1985)) for a license as a small business investment company.

Interested parties were given until close of business August 26, 1985, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02-0486 on December 30, 1985, to First New York Small Business Investment Company to operate as a small business investment company.

(Catolog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 14, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-1387 Filed 1-22-86; 8:45 am]

BILLING CODE 8025-01-M

San Antonio Advisory Council; Public Meeting

The U.S. Small Business Administration, Region VI Advisory Council located in the geographical area of San Antonio, Texas, will hold a public meeting at 9:00 a.m., on Friday, January 24, 1986, at the La Quinta-Airport, Airport and N.E. Loop 410, San Antonio, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Julio G. Perez, District Director, U.S. Small Business Administration, Federal Building, Room A-513, 727 E. Durango, San Antonio, Texas, (512) 229-6105.

Jean M. Nowak,

Director, Office of Advisory Councils.

January 16, 1986.

[FR Doc. 86-1388 Filed 1-22-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-81931]

Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Commttee (CCITT) will meet on February 20, 1986 at 10:00 a.m. in Room 1105, Department of State, 2201 C Street, NW., Washington, DC.

Study Group A deals with international telecommunications policy and services.

Study Group A will review matters relating to the March 1986 Working Party meetings of CCITT Study Group VIII taking place in Geneva, and provide a debriefing of the January/February Working Party meetings of CCITT Study Groups III and VII. In addition, it will make its final preparations regarding the U.S. Delegation to the upcoming meetings; and its final assessment of the current Study Group contributions that have been submitted for consideration.

Members of the general public may attend the meeting and join in the discussion subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled. All persons wishing to attend the meeting should contact the office of Earl Barbely, Department of State, Washington, DC; telephone (202) 632-6700. All attendees must use the C Street entrance to the building.

Dated: January 14, 1986.

Earl S. Barbely,

Director, Office of Technical Standards and Development.

[FR Doc. 86-1434 Filed 1-22-86; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/929]

Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group D Modem Working Party of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on February 10 and 11, 1986 at the Ramada Airport Inn, 1600 South 52nd Street, Tempe, Arizona.

There will be a Sub-Working Party meeting on Error Control at 9:00 a.m. on Monday, February 10, and a Modem Working Party meeting at 8:30 a.m. on Tuesday, February 11. The topic of discussion will be U.S. Contributions to CCITT Study Group XVII's April meeting.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of

the Chairman. Admittance of public members will be limited to the seating available. All persons planning to attend the meeting should contact Robert M. Fenichel at (202) 692–2124.

Dated: January 14, 1986.

Earl S. Barbely,

Director, Office of Technical Standards and Development.

[FR Doc. 86–1433 Filed 1–22–86; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM–8/932]

Secretary of State's Advisory Committee on Private International Law, Study Group on Leasing and Study Group on Factoring; Meetings

There will be meetings of the subject Study Groups at 10:00 a.m. and 2:15 p.m., respectively, on Friday, February 7, 1986 in Room 1406 of the Department of State. Members of the general public may attend up to the capacity of the meeting room and participate in the discussion subject to instructions of the Chairman.

The purpose of the work of the International Institute for the Unification of Private Law (UNIDROIT) on uniform rules on international financial leasing is to overcome certain problems encountered by the three parties to such transactions as the result of different national laws that may be applicable to financial leasing contracts and uncertainty as to which law(s) may apply. The meeting of the Study Group on Leasing in the morning is to review and provide the Department with advice on the current draft of uniform rules prepared by an international group of experts with U.S. participation under the auspices of UNIDROIT. An earlier draft of the rules was discussed with U.S. participation at a first UNIDROIT meeting of governmental experts in April, 1985; a second such meeting is scheduled for April, 1986. At least a third meeting of governmental experts on leasing rules is anticipated. The final draft uniform rules produced by UNIDROIT are to constitute the point of departure for an eventual international diplomatic conference to adopt rules on international financial leasing in final form as part of an international convention to which countries could become parties.

The purpose of UNIDROIT's work on uniform rules on certain aspects of international factoring is to permit factors and traders to avoid some of the difficulties they now encounter with factoring contracts in relation to legal systems that were not designed to accomodate them and uncertainty as to which national law(s) may be applicable. The meeting of the Study Group on Factoring in the afternoon of February 7 is to examine the current draft of the uniform rules and review draft written U.S. government comments on the draft rules that are to be transmitted by the Department of State to UNIDROIT in final form after the meeting. Earlier versions of the draft uniform rules were prepared by an international group of experts under UNIDROIT auspices and were discussed at a first UNIDROIT meeting of governmental experts on this topic in April, 1985; a U.S. expert actively participated in this work. The final meeting of governmental experts on these rules is scheduled by UNIDROIT for April, 1986 and is expected to approve the text of the draft rules that is to be submitted to an eventual international diplomatic conference.

Entry to the Department of State building is controlled and members of the general public should use the "C" Street ("diplomatic") entrance at 22nd and C Streets. As entry will be facilitated by advance arrangements, members of the general public planning to attend should, prior to February 5, notify the Office of the Assistant Legal Adviser for Private International Law, Department of State, Washington, DC., 20520 (telephone: (202) 653–9851) of their name, affiliation, address and telephone number.

Peter H. Pfund,

Assistant Legal Adviser for Private International Law and Vice-Chairman, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 86–1457 Filed 1–22–86; 8:45 am]

BILLING CODE 4710–08–M

[Public Notice CM–8/930]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea Working Group on Fire Protection; Meeting

The U.S. Safety of Life at Sea (SOLAS) Working Group on Fire Protection will conduct an open meeting on February 12, at 9:30 AM in Room 1303 of the Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC 20593.

The purpose of this meeting will be to discuss plans for the 31st Session of the International Maritime Organization (IMO) Subcommittee on Fire Protection, February 24–28, 1986, including: location and separation of spaces, location of fire control plans, flame spread test for interior finish and deck coverings, portable and fixed halon units, bow and stern loading, helicopter facilities, line cleaning in chemical tankers, fire standards for bedding, upholstered furniture, smoke and toxicity, guidelines for cargo tank venting, review of the Mobile Offshore Drilling Unit (MODU) code and other miscellaneous subjects.

Members of the public may attend up to the seating capacity of the room.

For further information contact Mr. Donald J. Kerlin, U.S. Coast Guard (G–MTH–4/13), 2100 Second Street, SW., Washington, DC Telephone: (202)426–2197.

Dated: January 15, 1986.

William H. Dameron,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 86–1435 Filed 1–22–86; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

New Grant Assurance for the Airport Improvement Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of an additional grant assurance to be used in the Airport Improvement Program.

SUMMARY: This notice provides a grant assurance to be added to the existing assurances that airport and planning agency sponsors must make as a condition to approval of a grant application for Federal assistance under the Airport Improvement Program (AIP). The original Part V assurances were published in the **Federal Register**, Volume 49, No. 174, September 6, 1984. This new assurance will be included with the existing assurances which must be submitted by the sponsor as Part V of the application for AIP funds, as authorized by the Airport and Airway Improvement Act of 1982 (Pub.L. 97–248, as amended). The assurance identifies for airport and planning agency sponsors a listing of approved policies, standards, and specifications that must be complied with under the current provisions of paragraphs C.1 and C.16 of Part V Assurances of grant contract. It also recites the statutory obligation of grant sponsors to comply with applicable state standards when they have been approved by FAA.

DATE: This assurance will be included in grants issued on or after March 1, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Richard L. Rodine, APP–510, Program Guidance Branch, Office of Airport Planning and Programming

(Room 619), Federal Aviation Administration, 800 Independence Ave. SW. Washington, DC 20591, Telephone: (202) 426–3857.

Background

Section 509(a)(1) of the Airport and Airway Improvement Act of 1982 (AAIA) requires that "All proposed airport development shall be in accordance with standards established or approved by the Secretary, including, but not limited to, standards for site location, airport layout, site preparation, paving, lighting, and safety of approaches." To provide airport and planning agency sponsors standards which must be followed in developing and implementing the project, a new assurance identifying the standards to follow will be included in Part V of the application for Federal assistance. Additionally, as with the existing Part V assurances submitted with the application, the assurances will be incorporated into the grant agreement by reference.

As allowed in section 509(c) of the AAIA, where states have established and Secretary has approved airport development standards at nonprimary, public-use airports (other than standards for safety of approaches) the applicable state standards shall be used.

Any modification to the technical standards of the advisory circulars indentified, must be with the approval of the Secretary and must provide an accepatable level of safety, economy, durability, and workmanship.

Issued in Washington, DC on January 14, 1986.

Paul L. Galis,

Director, Office of Airport Planning and Programming.

Assurance

Policies, Standards, and Specifications. It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including but not limited to the advisory circulars listed below, and in accordance with applicable state policies, standards, and specifications approved by the Secretary.

Number	Subject
70/7460-1G	Obstruction Marking and Lighting.
150/5200-23	Airport Snow and Ice Control.
150/5210-5A	Painting, Marking, and Lighting of Vehicles Used on an Airport.
150/5210-7B	Aircraft Fire and Rescue Communications.
150/5210-10	Airport Fire and Rescue Equipment Building Guide.
150/5210-14	Guide Specification—Airport Firefigher Protective Clothing.
150/5220-4A	Water Supply Systems for Aircraft Fire and Rescue Protection.
150/5220-10	Guide Specification for Water-Foam Type Aircraft Fire and Rescue Trucks.
150/5220-11	Airport Snowblower Specification Guide.
150/5220-12	Airport Snowsweeper Specification Guide.
150/5220-13A	Runway Surface Condition Sensor—Specification Guide.
150/5220-14A	Airport Fire and Rescue Vehicle Specification Guide.
150/5220-15	Buildings for Storage and Maintenance of Airport Snow Removal and Ice Control Equipment: A Guide.
150/5300/2D	Airport Design Standards—Site Requirements for Terminal Navigation Facilities.
150/5300-4B	Utility Airports—Air Access to National Transportation.
150/5300-12	Airport Design Standards—Transport Airports.
150/5320-5B	Airport Drainage.
150/5320-6C	Airport Pavement Design and Evaluation.
150/5320-12	Methods for the Design, Construction, and Maintenance of Skid Resistant Airport Pavement Surfaces.
150/5320-14	Airport Landscaping for Noise Control Purposes.
150/5325-4	Runway Length Requirements for Airport Design.
150/5340-1E	Marking of Paved Areas on Airports.
150/5340-4C	Installation Details for Runway Centerline Touchdown Zone Lighting Systems.
150/5340-5B	Segmented Circle Airport Marker System.
150/5340-14B	Economy Approach Lighting Aids.
150/5340-17A	Standby Power for Non-FAA Airport Lighting Systems.
150/5340-18B	Standards for Airport Sign Systems.
150/5340-19	Taxiway Centerline Lighting System.
150/5340-21	Airport Miscellaneous Lighting Visual Aids.
150/5340-23A	Supplemental Wind Cones.
150/5340-24	Runway and Taxiway Edge Lighting System.
150/5340-27	Air-to-Ground Radio Cotrol of Airport Lighting Systems.
150/5345-3C	Specification for L-821 Panels for Remote Control of Airport Lighting.
150/5345-5A	Circuit Selector Switch.
150/5345-7D	Specification for L-824 Underground Electrical Cable for Airport Lighting Circuits.
150/5345-10E	Specification for Constant Current Regulators and Regulator Monitors.
150/5345-12C	Specification for Airport and Heliport Beacon.
150/5345-13	Specification for L-841 Auxiliary Relay Cabinet Assembly for Pilot Control of Airport Lighting Circuits.
150/5345-26B	Specification for L-823 Plug and Receptacle, Cable Connectors.
150/5345-27C	Specification for Wind Cone Assemblies.
150/5345-28D	Precision Approach Path Indicator (PAPI) Systems.
150/5345-39B	FAA Specification L-853, Runway and Taxiway Centerline Retroreflective Markers.
150/5345-42B	FAA Specification L-857, Airport Light Bases, Transformer Houses, and Junction Boxes.
150/5345-43C	Specification for Obstruction Lighting Equipment.
150/5345-44D	Specification for Taxiway and Runway Signs.
150/5345-45	Lightweigh Approach Light Structure.
150/5345-46A	Specification for Ruway and Taxiway Light Fixtures.
150/5345-47	Isolation Transformers for Airport Lighting Systems.
150/5345-48	Specification for Runway and Taxiway Edge Lights.
150/5345-49	Specification L-854, Radio Control Equipment.
150/5345-50	Specification for Portable Runway Lights.
150/5345-51	Specification for Discharge-Type Flasher Equipment.
150/5370-6A	Construction Progress and Inspection. Report—Federal-Aid Airport Program.
150/5370-10	Standards for Specifying Construction of Airports.
150/5370-11	Use of Nondestructive Testing Devices in the Evaluation of Airport Pavements.
150/5370-12	Quality Control of Construction for Airport Grant Projects.
150/5390-1B	Heliport Design Guide.

[FR Doc. 86–1360 Filed 1–22–86; 8:45 am]
BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Jefferson County, AL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Jefferson County, Alabama.

FOR FURTHER INFORMATION CONTACT: Mr. R.W. Evers, District Engineer, Federal Highway Administration, 441 High Street, Montgomery, Alabama 36104–4684, Telephone: (205) 832–7379. Mr. Ray D. Bass, State of Alabama Highway Department, 1409 Coliseum Boulevard, Montgomery, Alabama 36130, Telephone: (205) 261–6311.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the State of Alabama Highway Department, will prepare an Environmental Impact Statement (EIS) for Alabama Project APD–471(7). This proposal is to construct a modern multi-lane highway with limited access from County Line Road at the Walker/Jefferson County line eastward across I–65 to US 31 in the Birmingham Metropolitan area. Estimated project length is 16 miles.

The proposed project is a segment of Corridor "X" in the Appalachian Development Highway Program. Corridor "X," a freeway-type facility, when completed will extend from near Fulton, Mississippi, to Birmingham, Alabama. The modern multi-lane highway will improve access and induce economic growth to this Appalachian area.

Alternatives under consideration include: (1) Four alternate route locations, (2) a no action alternative, and (3) postponing the action alternative.

Numerous public involvement meetings have been held to solicit input on the proposed alignments. An Environmental Assessment was developed for the proposed project and a formal public hearing was held January 14, 1985. As a result of comments from the public hearing and many public involvement meetings, the

category of the project is being upgraded to an Environmental Impact Statement.

Written comments have been solicited from Federal, State and local agencies officials and individuals who may have an interest in the project. To ensure that the full range of issues related to this proposed action is addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 23.003, Appalachian Development Highway System. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program)

Issued on January 13, 1986.

Ronald W. Evers,

District Engineer, Montgomery, Alabama.

[FR Doc. 86-1375 Filed 1-22-86; 8:45 am]

BILLING CODE 4910-22-M

Research and Special Programs Administration

[Docket No. 85-7W; Notice 2]

Transportation of Natural and Other Gas by Pipeline; Grant of Waiver

The Transcontinental Gas Pipeline Company (Transco) had petitioned for a waiver from compliance with 49 CFR 192.553(d), which limits any increase of the maximum allowable operating pressure (MAOP) of existing gas pipelines to that pressure allowed for new pipelines of like material in the same location. The waiver would apply to four transmission line segments, two on Main Line "A" and two on Main line "B," located in parallel in Pike County, Mississippi, on line sections between Main Line Valve (MLV) 65-20 and Compressor Station No. 70. The MAOP of the subject segments would be increased from the present 770 psig (established under § 192.619(c)) to 780 psig (72 percent of specified minimum yield strength (SMYS)) of Main Line "A" and to 800 psig (68 percent of SMYS) for Main Line "B." The subject segments are between Mile Post (MP) 652.5 and MP 655.75 and between MP 653.63 and MP 652.00. The remaining portions of the line secitons were previously qualified to operate at the higher pressures requested.

In response to this petition, the Research and Special Programs Administration (RSPA) issued a Notice of a Petition for Waiver inviting interested persons to comment (Notice 1; 50 FR 47322, November 15, 1985). In this notice, RSPA explained why granting Transco a waiver from § 192.553(d) to permit uprating of the two segments of Line "A" and two segments of Line "B" described above would not affect safety.

Comments were received from five pipeline operators and one industry organization, each of whom endorsed the petition and recommended granting the waiver. In addition to these comments, one State agency questioned the need for a waiver on the basis of the exception from § 192.553(d) in § 192.555(c). This exception does not, however, permit operation of the subject segments above 770 psig, which as provided in § 192.555(c), is the "highest pressure that is permitted under § 192.619."

In consideration of the foregoing, RSPA by this order finds that compliance with § 192.553(d) is unnecessary for the reasons set forth in Notice 1, and that the requested waiver would not be inconsistent with pipeline safety. Accordingly, effective immediately, Transcontinental Gas Pipeline Company is granted a waiver from compliance with § 192.553(d) regarding the two segments of Line "A" and two segments of Line "B" described above for the purpose of uprating to 780 psig and 800 psig, respectively.

(49 .S.C. 1672; 49 CFR Part 1.53(a); Appendix A of Part 1, and Appendix A of Part 106)

Issued in Washington, D.C., on January 16, 1986.

Robert L. Paullin,

Director, Office of Pipeline Safety, Research and Special Programs Administration.

[FR Doc. 86-1382 Filed 1-22-86; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

[Docket No. 86-1]

Senior Executive Service; Performance Review Board; Membership

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Notice of change in membership of senior executive service performance review board.

SUMMARY: This notice announces the new membership of the OCC Performance Review Board (PRB), pursuant to 5 U.S.C. 4314(c)(4).

EFFECTIVE DATE: January 23, 1986.

FOR FURTHER INFORMATION CONTACT: Gary W. Norton, Director for Human Resources, (202) 447-1460, Office of the Comptroller of the Currency, 490 L'Enfant Plaza, East SW., Washington, D.C. 20219.

SUPPLEMENTARY INFORMATION: The membership of the OCC PRB (50 FR 1972, January 14, 1985) has been changed. The current membership is as follows:

Michael A. Mancusi, Chairperson, Senior Deputy Comptroller for National Operations
H. Joe Selby, Senior Deputy Comptroller for Bank Supervision
Richard V. Fitzgerald, Chief Counsel
John F. Downey, Chief National Bank Examiner.

Date: January 17, 1986.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 86-1468 Filed 1-22-86; 8:45 am]

BILLING CODE 4810-33-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Drawings by Jacques de Gheyn

Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation of Authority of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "The Drawings By Jacques de Gheyn" (included in the list [1] filed as a part of this determination) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements between the National Gallery of Art and various foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art, Washington, DC, beginning on or about March 9, 1986, to on or about May 11, 1986, is in the national interest.

Public notice of this determination is ordered to be published in the Federal Register.

Dated: January 16, 1986.

C. Normand Poirier,

Acting, General Counsel and Congressional Liaison.

[FR Doc. 86-1455 Filed 1-22-86 8:45 am]

BILLING CODE 8230-01-M

[1] An itemized list of objects included in the exhibit is filed as part of the original document.

Culturally Significant Objects Imported for Exhibitions; Winslow Homer Watercolors

Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation of Authority of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Winslow Homer Watercolors" (included in the list [1] filed as a part of this determination) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to a loan agreement between the National Gallery of Art and the foreign lender. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art, Washington, DC, beginning on or about March 2, 1986, to on or about May 11, 1986; the Amon Carter Museum, Fort Worth, Texas, beginning on or about June 6, 1986, to on or about July 27, 1986; and the Yale University Art Gallery, New Haven, Connecticut, beginning on or about September 11, 1986, to on or about November 2, 1986 is in the national interest.

Public notice of this determination is ordered to be published in the Federal Register.

Dated: January 16, 1986.

C. Normand Poirier,

Acting, General Counsel and Congressional Liaison.

[FR Doc. 86-1456 Filed 1-22-86; 8:45 am]

BILLING CODE 8230-01-M

[1] An itemized list of objects included in the exhibit is filed as part of the original document.

[Delegation Order No. 85-6]

Authority Delegations; Deputy Director and to the Associate Directors

Pursuant to the authority vested in me as Director of the United States Information Agency by Reorganization Plan No. 2 of 1977, the Act entitled "An Act to provide certain basic authority for the Department of State," approved August 1, 1956, as amended (22 U.S.C. 2697), hereinafter referred to as the "State Department Basic Authorities Act", Executive Order 12048 of March 27, 1978 and Executive Order 12388 of October 14, 1982, I hereby delegate to the Deputy Director and to each Associate Director of the Agency: the authority to exercise the functions vested in the Director under Section 25 of the State Department Basic Authorities Act and under Section 105(f) of the Mutual Educational and Cultural Exchange Act of 1961, as amended.

This authority may only be redelegated to one senior officer in each Bureau. In the event of any vacancy in the Office of any Associate Director, or during the incapacity or absence of any of them, the authority delegated hereunder may be exercised by the respective Acting Associate Director.

Notwithstanding any other provision of this Delegation, the Director may at any time exercise any authority delegated herein.

This delegation is effective immediately.

Dated: October 31, 1985.

Charles Z. Wick,

Director.

[FR Doc. 86-1370 Filed 1-22-86; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) how often the form must be filed out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Nancy C. McCoy, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 389-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Jim Brown, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: January 15, 1986.

By direction of the Administrator.

Susan Livingstone,

Associate Deputy Administrator for Management.

Extension

1. Department of Veterans Benefits
2. Declaration of Status of Dependents
3. VA Form 21-686c
4. On occasion
5. Individuals or households
6. 226,000 responses
7. 56,500 hours
8. Not applicable.

[FR Doc. 86-1430 Filed 1-22-86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 15
Thursday, January 23, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, January 27, 1986, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,400–L
Cirod Trust Company, San Juan, Puerto Rico
Case No. 46,401–SR
Hohenwald Bank & Trust Co., Hohenwald, Tennessee
Case No. 46,406–L
The First National Bank of Midland, Midland, Texas
Case No. 46,407–SR
Mineral Bank of Nevada, Las Vegas, Nevada,
Case No. 46,409–L
The First National Bank of Midland, Midland, Texas
Case No. 46,412–L
Republic National Bank of Louisiana, New Orleans, Louisiana

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Report of the Director, Division of Liquidation:

Memorandum re: Reports Under Delegated Authority Status of Approved Committee Cases

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Summary Audit Report re:
Golden Valey Bank, Turlock, California, AP–450 (Memo dated December 19, 1985)
Summary Audit Report re:
Fidelity Bank of Denver, Denver, Colorado, AP–451 (Memo dated December 24, 1985)
Summary Audit Report re:
The First National Bank of Springfield, Springfield, Colorado, AP–457 (Memo dated December 26, 1985)
Summary Audit Report re:
Bank of Hunter, Hunter, Oklahoma, AP–452 (Memo dated December 30, 1985)
Summary Audit Report re:
Payroll System Development Project (Memo dated December 6, 1985)
Summary Audit Report re:
Analyses of Selected Expense Accounts (Memo dated December 13, 1985)
Summary Audit Report re:
Financial Information System Development Project (Memo dated December 30, 1985)
Summary Audit Report re:
Audit of Selected Assets and Income Accounts (Memo dated December 13, 1985)
Summary Audit Report re:
Lubbock Consolidated Office, Cost Center—3430 (Memo dated December 13, 1985)
Summary Audit Report re:
Portland Consolidated Office, Cost Center—3620 (Memo dated December 9, 1985)

Report of the Director, Division of Accounting and Corporate Services:

Memorandum regarding computer purchase.

Discussion Agenda:

Memorandum and resolution re: Notice of proposed rulemaking to solicit comment on two alternate proposals for amending Part 329 of the Corporation's rules and regulations, entitled "Interest on Deposits," to reflect changes in the Federal Deposit Insurance Act concerning interest-rate controls, which proposals: (1) Would maintain parity between Part 329 and proposed Regulation Q as recently published by the Board of Governors of the Federal Reserve System; or (2) would focus more narrowly on the Corporation's own statutory responsibilities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: January 17, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86–1546 Filed 1–21–86; 12:39 am]

BILLING CODE 6714–01–M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, January 27, 1986, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552(c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of tha affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of

subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Notice of acquisition of control:

Name of acquiring party and name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(4), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), and (c)(9)(A)(ii)).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsection (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: January 17, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

FR Doc. 86–1547 Filed 1–21–86; 12:40 pm]

BILLING CODE 6714–01–M

3

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NO.: 86–1190.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, January 23, 1986, 10:00 a.m.

THE FOLLOWING ITEM HAS BEEN ADDED TO THE AGENDA: Revised Draft AO 1985–40— James M. Cannon, Republican Majority Fund.

* * * * *

DATE AND TIME: Tuesday, January 28, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

* * * * *

Special Open Meeting

DATE AND TIME: Wednesday, January 29, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

MATTER TO BE CONSIDERED: Public Hearing—Notice of Inquiry: The use of undisclosed funds or "Soft Money" to influence Federal elections.

* * * * *

DATE AND TIME: Thursday January 30, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTER TO BE CONSIDERED:

Setting of Dates of Future Meetings
Correction and Approval of Minutes
FY 1986 Budget Reduction and Amended FY 1986 Management Plan
Routine Administrative Matters

* * * * *

DATE AND TIME: Thursday, January 30, 1986, 2:00 p.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor).

STATUS: Special Open Meeting.

MATTER TO BE CONSIDERED:

Continuation of public hearing on the use of undisclosed funds or "soft money" to influence Federal election (if necessary).

* * * * *

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202–523–4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 86–1570 Filed 1–21–86; 3:59 pm]

BILLING CODE 6715–01–M

4

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Wednesday, January 29, 1986 at 10:00 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and Complaints.
5. Investigation 731–TA–254 [Final] (Heavy-walled rectangular welded carbon steel pipes and tubes from Canada)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523–0161.

Dated: January 17, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–1502 Filed 1–21–86; 10:47 am]

BILLING CODE 7020–02–M

5

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 20, 27, February 3, and 10, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of January 20

Tuesday, January 21

2:00 p.m.
Briefing on Status of Report of Task Force on Technical Specifications (Public Meeting)

Wednesday, January 22

10:00 a.m.
Briefing on San Onofre and Status of Rancho Seco (Public Meeting)
2:00 p.m.
Discussion of Management/Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Thursday, January 23

10:00 a.m.
Briefing by INPO (Public Meeting)
2:00 p.m.
Briefing by DOE on Monitored Retrievable Storage (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Alternative Approaches for Implementing the Sholly Amendment on No Significant Hazards Considerations
b. "60 Minutes" Broadcast on Shoreham Construction (Postponed from January 16)

Friday, January 24

9:30 a.m.
Presentations by Participants on Proposed Amendments to Part 60 (Public Meeting)

Week of January 27—Tentative

Tuesday, January 28

10:00 a.m.
Briefing on Staff Activities Regarding TVA (Public Meeting)
2:00 p.m.
Discussion on Design Basis Threat (Closed—Ex. 1)

Wednesday, January 29

10:00 a.m.
Discussion/Possible Vote on Full Power Operating License for Millstone-3 (Public Meeting)

2:00 p.m.
Discussion of Management/Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of February 3—Tentative

Wednesday, February 5

2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of February 10—Tentative

Tuesday, February 11

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Wednesday, February 12

2:00 p.m.
Discussion of Staff Recommendations on Enforcement Policy (Public Meeting)

Thursday, February 13

2:00 p.m.
Status Briefing on Fermi (Open/Portion may be Closed—Ex. 5 & 7)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, February 14

10:00 a.m.
Discussion of Fire Protection Rule (Public Meeting)

Julia Corrado,
Office of the Secretary.
January 14, 1986.
[FR Doc. 86-1461 Filed 1-21-86; 9:00 am]
BILLING CODE 7590-01-M

6

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [51 FR 270 January 2, 1986].

STATUS: Closed/open meetings.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Tuesday, December 31, 1985.

CHANGE IN THE MEETING: Deletions.

The following item was not considered at a closed meeting scheduled for Tuesday, January 7, 1986, at 2:30 p.m.: Opinions.

The following item was not considered at an open meeting scheduled for Thursday, January 9, 1986, at 10.00 a.m.

Consideration of (1) a proposal by the Philadelphia Stock Exchange, Inc. to trade options on the European Currency Unit (File No. SR-Phlx-85-10) and (2) a proposal by the Option Clearing Corporation to issue, clear and settle such options (File No. SR-OCC-85-14). For further information, please contact Alden Adkins at (202) 272-2843.

Chairman Shad and Commissioners Cox, Peters, Grundfest, and Fleischman determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Powers at (202) 272-2091.

Dated: January 16, 1986.

John Wheeler,
Secretary.
[FR Doc. 86-1451 Filed 1-17-86; 4:22 pm]
BILLING CODE 8010-01-M

Federal Register

Thursday
January 23, 1986

Part II

Department of Commerce

Economic Development Administration

Economic Development Assistance Programs as Described in Conference Report 99-414, Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations, 1986; Availability of Funds; Notice

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 51210-5210]

Economic Development Assistance Programs as Described in Conference Report 99-414, Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations, 1986; Availability of Funds

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Notice.

SUMMARY:

I. Program: Planning Assistance for Economic Development Districts, Redevelopment Areas and Indian Tribes

(Catalog of Federal Domestic Assistance: 11.302 Economic Development—Support for Planning Organizations)

Summary: The Economic Development Administration announces its policies and application procedures for funds available to defray administrative expenses in support of the economic development planning efforts of Economic Development Districts (Districts), Redevelopment Areas (Areas) and Indian Tribes under the authority of section 301(b) of the Public Works and Economic Development Act of 1965, as amended, (PWEDA), 42 U.S.C. 3151(b).

Eligibility: Eligible applicants are Economic Development Districts, Redevelopment Areas, organizations representing Redevelopment Areas (or parts of such Areas) and Indian Tribes.

Project Objective: The primary objective of planning assistance for administrative expenses under section 301(b) to the support the formulation and implementation of economic development programs designed to create or retain full-time permanent jobs and income, particularly for the unemployed and underemployed in the most distressed areas served by the applicant. Planning activities conducted under this assistance must be part of a continuous process involving public officials and private citizens.

Funding Availability: Funds in the amount of $19 million are available in two categories: Districts and Areas (Category A)—$16 million; and Indian Tribes (Category B)—$3 million.

Funding Instrument: Grant assistance will be provided for up to 75 percent of project costs for Category A grants. Under Category A, the applicant will be required to provide the remaining share. Category B grant assistance will be provided for up to 100 percent of project costs.

Project Duration: Both Category A and Category B assistance will normally be for period of twelve months.

Selection Criteria: Priority consideration will be given to currently funded grantees with proposals which are eligible under section 301(b) of PWEDA, 42 U.S.C. 3151(b). Funds which remain will be utilized to fund new proposals from other eligible applicants under both Categories A and B and/or to fund special economic development activities (e.g., export development or industrial park marketing) that cannot be financed within the limited resources of the applicant's basic 301(b) grant. It is possible that no funds will be available to assist new applicants for either basic or special activity grants; in any event, funds for such purposes will be extremely limited. Information on application procedures for any funds available for new special activity grants will be provided by EDA's Regional Offices after February 28, 1986.

EDA will consider the following factors in evaluating proposals:

1. The responsiveness of the proposed work program to the program regulations contained in 13 CFR 307.22;
2. The economic distress of the area served by the applicant;
3. For currently funded grantees, past performance (including information in scheduled progress reports).

Pre-Application Procedures: Currently funded grantees and other eligible applicants under both Categories A and B should begin the application process for basic grants (new and ongoing) and ongoing special activity grants by submitting a proposal which should include:

1. A letter signed by the chief elected official (Chairman of the Board, Tribal Chairman) or another authorized official of the District, Area or Indian tribe stating their desire to receive funds to carry out the types of planning and administrative activities eligible under the 301(b) program; and
2. A work program outlining the specific economic development activities that will be carried out during the grant period.

EDA Regional Offices will contact currently funded grantees whose grants expire on or prior to December 31, 1985, to inform them of the procedures for submitting proposals for additional funding. Grantees whose programs expire after December 31, 1985, should submit a proposal no later than 60 days prior to the date their program expires. New applicants should submit their proposals to the appropriate EDA Regional Office no later than March 31, 1986. Proposals postmarked after these dates may not receive consideration.

Formal Application Procedures: EDA will evaluate proposals for basic grants using the selection criteria mentioned above before authorizing the submission of a formal application. Following a review of proposals, EDA will invite proponents whose proposals are selected for funding consideration to submit a formal application, which will include an ED-430 Planning Grant Application, and other required application materials.

EDA will evaluate applications for conformance with published statutory, regulatory and policy requirements. Except in cases where work program changes or other factors dictate a different approach, EDA expects to offer grant amendments to currently funded grantees selected for assistance.

Applications proposed for funding under this program are subject to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs."

Applicants who have a delinquent accounts receivable with the Federal government may not receive new awards until these debts have been paid or arrangements to pay them have been approved by the Department of Commerce.

Unsuccessful applicants will be notified of the status of their applications when all of EDA's funds for this program have been awarded.

Further Information: For further information contact the appropriate EDA Regional Office (see list below) or Luis F. Bueso, (202) 377-2873, Office of Planning, Technical Assistance, Research and Evaluation, Economic Development Administration, Room 7866, U.S. Department of Commerce, Washington, DC 20230.

II. Program: Planning Assistance for States and Urban Areas

(Catalog of Federal Domestic Assistance: 11.305 Economic Development—State and Urban Area Economic Development Planning)

Summary: The Economic Development Administration announces its policies and application procedures for funds available for the State and Urban Planning Program operated under the authority of section 302(a) of the Public Works and Economic Development Act of 1965, as amended, (PWEDA), 42 U.S.C. 3151a.

Eligibility: Eligible applicants under this program are states, territories, cities and urban counties.

Project Objective: The primary objective of planning assistance under

section 302(a) is to strengthen the economic development planning and policy-making capabilities of states, territories, cities and urban counties to ensure a more effective use of available resources in addressing economic problems, particularly those resulting in high unemployment and low incomes. Planning activities conducted under this assistance must be part of a continuous process involving public officials and private citizens.

Funding Availability: Funds in the amount of $8 million ($3 million for States and $5 million for urban areas) are available for providing grant assistance under this program.

Funding Instrument: Grant assistance will be provided for up to 75 percent of project costs. Applicants will be required to provide the remaining share.

Project Duration: Assistance under this program will normally be for a period of twelve months.

Selection Criteria: Priority consideration will be given to currently funded grantees with proposals which are eligible under section 302(a) of PWEDA, 42 U.S.C. 3151a. Funds which remain will be utilized to fund new proposals from states, territories, and cities and counties with populations of 50,000 or more. EDA will consider the following factors in evaluating proposals:

1. The responsiveness of the proposed work program to the program regulations contained in 13 CFR 307.52(a)(2);

2. The economic distress of the area served by the applicant;

3. For currently funded grantees, past performance (including information in scheduled progress reports).

Pre-Application Procedures: Currently funded grantees and other eligible applicants should begin the application process by submitting a proposal which should include:

1. A letter signed by the head of the applicant organization or another authorized official stating their desire to receive funds to carry out the types of planning activities eligible under the 302(a) program; and

2. A work program outlining the specific economic development planning activities that will be carried out during the grant period.

Proposals should be submitted to Beverly L. Milkman, Director, Office of Planning, Technical Assistance, Research and Evaluation, Economic Development Administration, Room 7866, U.S. Department of Commerce, Washington, DC 20230.

EDA staff will contact grantees whose grants expire on or prior to December 31, 1985, to inform them of the procedures for submitting proposals for funding. Those grantees whose programs expire after December 31, 1985, should submit a letter of intent that includes the amount of the proposed request no later than February 24, 1986, or 60 days prior to the date their program expires, whichever is earlier. These grantees should submit a proposal no later than 60 days prior to the date their program expires. New applicants should submit their proposals no later than February 28, 1986. Proposals postmarked after these dates may not receive consideration.

Formal Application Procedures: EDA will evaluate proposals using the selection criteria mentioned above before authorizing the submission of a formal application. Following a review of proposals, EDA will invite proponents whose proposals are selected for funding consideration to submit a formal application, which may include an ED–430 Planning Grant Application, and other required application materials.

EDA will evaluate applications for conformance with published statutory, regulatory and policy requirements. Except in cases where work program changes or other factors dictate a different approach, EDA expects to offer grant amendments to currently funded grantees selected for assistance.

Applications proposed for funding under this program are subject to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs."

Applicants who have delinquent accounts receivable with the Federal government may not receive new awards until these debts have been paid or arrangements to pay them have been approved by the Department of Commerce.

Unsuccessful applicants will be notified of the status of their applications when all of EDA's funds for this program have been awarded.

Further Information: For further information contact Luis F. Bueso (202) 377–2873 at EDA Headquarters in Washington, DC.

III. Program: Technical Assistance for University Centers

(Catalog of Federal Domestic Assistance: 11.303 Economic Development—Technical Assistance)

Summary: The Economic Development Administration announces its policies and application procedures for funds available to support University Centers under the authority of section 301(a) of the Public Works and Economic Development Act of 1965, as amended, (PWEDA), 42 U.S.C. 3151(a). University Centers, utilizing external resources and those of the college or university of which they are an integral element, provide technical and other kinds of assistance to public bodies, non-profit organizations and private firms located chiefly in areas of economic distress.

Eligibility: Eligible applicants under this program are public and private colleges and universities.

Program Objectives: To stimulate colleges and universities to mobilize more fully their resources to overcome problems which impede economic development in the area or region they serve.

Funding Availability: Funds in the amount of $5 million are available for this program. At least $4 million of this amount will be used to fund the basic economic development assistance programs of currently funded University Centers and new Centers under the approach outlined below.

Use of the remaining resources will be announced to University Centers at a later date. Possible uses include start-up support to enable Centers to offer new economic development services; funding to permit Centers to provide more in-depth assistance to some clients; project-specific funding to finance Center services in marketing or otherwise helping selected EDA-funded industrial parks realize their potentials; and funding to enable Centers to help small farmers diversify their operations and improve their earning capacities.

Funding Instrument: EDA will provide grants and cooperative agreements with maximum EDA participation of up to 75 percent of the proposed project cost. Applicants will be expected to provide the remaining share.

Project Duration: Assistance under this program will normally be for a period of twelve months.

Selection Criteria: Priority consideration will be given to the refunding and strengthening of those 39 Centers presently funded under the University Center Program which meet the selection criteria. Funds may also be used to fund new Centers which meet the selection criteria and/or special activities of currently funded Centers. EDA will consider the following factors in evaluating proposals for basic economic development assistance programs:

1. The nature and degree of distress in the area or region the Center will serve.

2. The program's relevance to the needs of the service area, relationship to activities of other organizations engaged in economic and business development with particular attention to how the program differs from any Small Business

Development Center or Minority Business Development Center programs, and furtherance of the goals of the college or university.

3. The commitment of the University to the Center's mission and purpose in terms of both its financial support and the dedication of other resources.

4. The Center's capacity to provide technical and other types of assistance to jurisdictions and organizations in the service area.

5. The Center's planned relationship to and support for local, regional or state economic development strategies.

6. The Center's relationship to the EDA Regional Office Strategy and to Department of Commerce objectives in so far as they are not inconsistent with the developmental needs of the area to be served. In evaluating proposals for new centers, EDA will also consider:

(1) Whether there is another EDA-funded Center in the state.

(2) Whether there are SBA- or MBDA-funded Centers serving the area.

(3) The extent to which the Center proposes to serve the economic development needs of community-based organizations and economically distressed jurisdictions.

Pre-Application Procedures—New Centers

A. *Letters of Interest:* Interested colleges and universities not presently in the program should indicate that they seek support by submitting a letter signed by the institution's president or another authorized official to the appropriate EDA Regional Office stating that they wish to participate in EDA's University Center Program. A copy should be sent to the state Economic Development Representative. The letter should identify the area their Center will serve and the degree and kind of economic distress it suffers; the relationship of the program to state, regional or local economic development strategies, as appropriate; and the kinds of activity to be undertaken with EDA funds.

The letters of interest should be submitted to the appropriate EDA Regional Office no later than February 24, 1986. Letters postmarked after this date may not be considered.

B. *Proposals:* New applicant colleges and universities selected by EDA for consideration for inclusion in the program will be invited to submit a proposal. The Regional Office will provide a proposal package to these applicants.

New applicant colleges and universities selected for further consideration will be advised no later than March 28, 1986, to submit a proposal.

Formal Application Procedures—New Centers: EDA will evaluate new applicant proposals using the selection criteria mentioned above before authorizing the submission of a formal application. Following a review of project proposals, EDA will invite new applicants whose projects are selected for funding consideration to submit a formal application.

EDA will evaluate applications for conformance with published statutory, regulatory and policy requirements.

Applications proposed for funding under this program are subject to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs."

Applicants who have delinquent accounts receivable with the Federal government may not receive new awards until these debts have been paid or arrangements to pay them have been approved by the Department of Commerce.

When all of EDA's funds for this program have been awarded, unsuccessful applicants will be notified of the status of their applications as soon as possible.

Application Procedures–Currently Funded Centers: EDA Regional Offices will contact universities and colleges presently receiving support under the EDA University Center Program to inform them of the procedures for applying for renewal of their present grants.

Further Information: For further information contact the appropriate EDA Regional Office (see list below) or Scott V. Rutherford at (202) 377–2812, Office of Planning, Technical Assistance, Research and Evaluation, Economic Development Administration, Room 7866, U.S. Department of Commerce, Washington, DC 20230.

IV. Program: Local Technical Assistance Projects

(Catalog of Federal Domestic Assistance: 11.303 Economic Development—Technical Assistance)

Summary: The Economic Development Administration announces its policies and application procedures for funds available to provide technical assistance as may be required to ensure the successful implementation of area and state economic development programs and projects designed to aid areas experiencing economic distress. Funding will be provided under the authority of section 301(a) of the Public Works and Economic Development Act of 1965, as amended, (PWEDA), 42 U.S.C. 3151(a).

Eligibility: Eligible applicants under this program include: public or private non-profit state, area, district, or local organizations; private individuals, partnerships, firms, corporations, and other suitable institutions (including Indian tribes, cities, state agencies and educational institutions).

Project Objectives: The objectives of Section 301(a) local technical assistance grants and cooperative agreements is to provide help that will be useful in alleviating or preventing conditions of excessive unemployment or underemployment in individual states or sub-state areas.

Funding Availability: Up to $1.5 million will be available for the Local Technical Assistance Program.

Funding Instrument: EDA will provide grants and cooperative agreements with maximum EDA participation of up to 75 percent of the proposed project cost. Applicants will be expected to provide the remaining share.

Project Duration: Assistance will be for the period of time required to complete the scope of work. This will generally not exceed twelve months.

Selection Criteria: Priority will be given to projects which are eligible under section 301(a) of PWEDA, 42 U.S.C. 3151a, if such projects:

1. Lead to the near-term creation and/or retention of private sector jobs;

2. Stimulate significant private and non-Federal public capital formation and investment for economic development purposes;

3. Are consistent with the EDA approved overall economic development program (OEDP) for the area in which the projects are, or will be, located and have been recommended by the OEDP Committee;

4. Are located in distressed areas;

5. Combine support for the following Department of Commerce goals with the accomplishment of economic development objectives: export promotion, productivity enhancement, technology development and utilization, and minority business development;

6. Contribute to improving the economic well-being of rural America and small family farmers;

7. Further the objectives of EDA Regional Office Strategies. (Information on Regional Office Strategies must be obtained from the appropriate Regional Office.)

Projects will also be evaluated on the quality of the proposed work program and the qualifications of the applicant to carry out that work program.

Pre-Application Procedures: Interested applicants must contact the Economic Development Representative

(EDR) for the area or the appropriate EDA Regional Office for a proposal package. The EDA Regional Office can furnish the name, address and telephone number of the EDR for the applicant's area.

Proposals should be submitted to the appropriate EDR or EDA Regional Office as early in the fiscal year as possible, but no later than March 15, 1986. Proposals postmarked after that date will not receive consideration.

EDA will evaluate all of the proposals it receives and will authorize formal applications for EDA funding for those which best satisfy the criteria for project selection outlined above. EDA Regional Offices will either evaluate proposals on a monthly or bi-monthly basis starting in December 1985, or evaluate all proposals received after the March 15, deadline.

Formal Application: Successful proponents will receive an application for EDA funding from the appropriate EDA Regional Office.

EDA will evaluate applications for conformance with published statutory, regulatory and policy requirements.

Applications proposed for funding under this program are subject to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs."

Applicants who have delinquent accounts receivable with the Federal government may not receive new awards until these debts have been paid or arrangements to pay them have been approved by the Department of Commerce.

When all of EDA's funds for this program have been awarded, unsuccessful applicants will be notified of the status of their applications as soon as possible.

Further Information: For Further information contact the appropriate EDA Regional Office (see list below) or the appropriate EDA State Representative whose name, telephone and address may be obtained from the EDA Regional Office.

V. Program: National Technical Assistance Projects

(Catalog of Federal Domestic Assistance: 11.303 Economic Development—Technical Assistance)

Summary: The Economic Development Administration announces its policies and application procedures for funds available to provide technical assistance under the National Technical Assistance Program. Funding will be provided under the authority of section 301(a) of the Public Works and Economic Development Act of 1965, as amended, (PWEDA), 42 U.S.C. 3151(a).

Eligibility: Eligible applicants under this program include: public or private non-profit national, state, area, district, or local organizations; private individuals, partnerships, firms, corporations, and other suitable institutions (including Indian tribes and educational institutions).

Program Objective: The objective of section 301(a) technical assistance grants and cooperative agreements is to provide help that will be useful in alleviating or preventing conditions of excessive unemployment or underemployment in distressed rural and urban areas. Grants and cooperative agreements will be made to (1) address topical economic development issues and problems, especially those related to farming and small farm communities, as well as those associated with realizing the potential of EDA-funded industrial parks; (2) demonstrate the effectiveness of new approaches to stimulating economic development in depressed areas; and/or (3) disseminate to the appropriate audiences information and products designed to help promote economic development in distressed areas including materials and data developed under (1) and (2).

It is expected that the program impact will be in the near term, i.e. three to five years.

Funding Availability: $1.5 million are available for this program. Funds will primarily be used for projects selected through the application procedures cited below, but may also be used for EDA-initiated solicitations.

Funding Instrument: EDA will provide grants and cooperative agreements that normally will cover up to 75 percent of the proposed project cost. Applicants will be expected to provide the remaining share.

Project Duration: Assistance will be for the period of time required to complete the scope of work. This will generally not exceed twelve months.

Selection Criteria:

a. How well the proposal addresses the Program Objectives cited above.

b. Clarity and appropriateness of the project design.

c. Organizational capacity, and qualifications of the specific staff proposed for the project.

d. Reasonableness of the proposed budget. Additional selection criteria will be spelled out in the National Technical Assistance Program material which will be provided by EDA to prospective applicants.

Pre-Application Procedures: To obtain the additional criteria and application information, interested parties must write Peggy Wireman, Chief, Technical Assistance Division, Economic Development Administration, Room 7852, U.S. Department of Commerce, Washington, DC 20230.

Applicants must submit five copies of brief concept proposals (no more than 10–15 double-spaced pages, exclusive of budget, vitae and capability data).

Proposals must provide:

- Complete name and address of applicant organization, contact person and telephone number, and legal status of organization.
- Description of the proposed technical assistance.
- Vitae.
- Capability statement of proposing organization or individual(s).
- Project budget, including funds sought from EDA and the applicant's share.

Address and Deadline: Proposals under this program are to be submitted to Beverly L. Milkman, Director, Office of Planning, Technical Assistance, Research and Evaluation, Economic Development Administration, Room 7866, U.S. Department of Commerce, Washington, DC 20230.

Proposals must be submitted no later than March 14, 1986. Proposals postmarked after this date may not be considered.

Formal Application Procedures: EDA will evaluate proposals using the selection criteria mentioned above before authorizing the submission of a formal application. Following a review of project proposals, EDA will invite proponents whose projects are selected for funding consideration to submit a formal application.

EDA will evaluate applications for conformance with published statutory, regulatory and policy requirements.

Applications proposed for funding under this program involving substantial on-site work in a single state are subject to the requirements of Executive Order 12372, "Intergovernmental review of Federal Programs."

Applicants may be subject to Pre-award accounting system surveys by the Department of Commerce's Office of the Inspector General.

Applicants who have delinquent accounts receivable with the Federal government may not receive new awards until these debts have been paid or arrangements to pay them have been approved by the Department of Commerce.

When all of EDA's funds for this competition have been awarded, unsuccessful applicants will be notified of the status of their proposals or applications as soon as possible.

Eligibility for Specific Solicitations: In addition to using technical assistance funds to support proposals submitted under the procedures described above, EDA may during the course of the fiscal year identify other work it wishes to have conducted. Organizations and individuals interested in being invited to respond to Solicitations of Applications (SOAs) to conduct such work should submit information on their capabilities and experience to the addressee listed above. This information will be used to determine an organization's or individual's eligibility to compete for projects under specific SOAs. Applicants who submit information postmarked after March 14, 1986, may not be invited to respond to SOAs this fiscal year.

Further Information: For further information contact Richard E. Hage at (202) 377–2127 in EDA Headquarters in Washington, DC.

VI. Program: Research and Evaluation Projects

(Catalog of Federal Domestic Assistance: 11.312 Economic Development—Research and Evaluation Program)

Summary: The Economic Development Administration announces its policies and application procedures for funds available for research and evaluation projects under the authority of section 301(c) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3151(c).

Eligibility: Eligible applicants are private individuals, partnerships, corporations, associations, colleges and universities, and other suitable organizations.

Project Objective: The objective of section 301(c) grants, and cooperative agreements are the following:

1. To determine the causes of unemployment, underemployment, underdevelopment, and chronic depression in various areas and regions of the Nation.

2. To assist in the formulation and implementation of national, state, and local programs that will raise employment and income levels and otherwise produce solutions to problems resulting from the above conditions.

3. To evaluate the effectiveness of programs, projects, and techniques used to (a) alleviate economic distress and (b) promote economic development.

Funding Availability: $2 million are available for this program. Funds will primarily be used for projects selected through the application procedures cited below, but may also be used for EDA-initiated solicitations.

Funding Instrument: EDA will provide grants and cooperative agreement awards covering up to 100 percent of project costs.

Priorities and Preferences: EDA will give priority to proposals dealing with—

(1) Employment and unemployment,

(2) Income and poverty,

(3) Rural and other nonmetropolitan economic development,

(4) Regional and local growth,

(5) Industrial location,

(6) Job creation methods,

(7) State and local government economic development efforts,

(8) Private sector economic development efforts,

(9) Developmental effects of public works and other infrastructure,

(10) Capital markets and development finance,

(11) Export development,

(12) Minority business and minority jobs, and

(13) Productivity and technology.

Requested grants and awards should be for specific well defined, one-time research projects. EDA research grants are not intended for support of continuing programs (ongoing research programs, publication and information programs periodic forecasts, etc.) or for nonresearch activities. Some research proposals deal with, or involve samples drawn from, only one part of the United States. EDA normally prefers research that is not thus limited in geographic scope or that at least covers a very large multi-state region, as opposed to research covering (in declining order of preference) a small region, a state, a multi-county area, or a single city or county. In general, EDA prefers cause-and-effect research and descriptive analyses to theoretical studies, modeling (other than for hypothesis testing), and the like. Economic development planning assistance and technical assistance for specific places will not be funded under the reseach program; the Planning and Technical Assistance Programs are for those purposes.

Project Duration: Assistance under this program will normally be for a period of 15 months.

Selection Criteria: EDA will use the following criteria to evaluate research proposals:

1. Priority and suitability of the subject (See Priorities and Preferences).

2. Qualifications of principal investigator(s) and, where appropriate, performing organization.

3. Need for and potential usefulness of the research.

4. General quality and clarity of the proposal.

5. Soundness and completeness of the research methodology.

6. Total cost, and value of product in relation to cost.

Application Procedures: Applicants should submit an original and three copies of each proposal. Proposals should be brief and concise; they should avoid long background discussions and literature surveys. But they should also be reasonably detailed, particularly in explaining methodology; econometric studies should include a preliminary list of variables to be used. Each proposal should include (1) a cover page given a short deseciptive project title, the name and address of the perfoming organization, the names and phone numbers of the project director and principal investigators, the project duration, and the amount of EDA funds requested; (2) a brief scope-and-objectives section saying why the project is needed, giving its objectives, and providing a capsule description of the project; (3) a more detailed description of the project and its methodology; (4) a work plan showing different phases of the project and their timing; (5) a detailed budget showing cost breakdowns, with EDA-funded and any non-EDA-funded costs presented in separate columns and with the EDA-funded costs adding to the total shown on the cover page; (6) resumes for the principal investigators; and (7) a corporate or institutional capability statement, where approriate.

The cover letter accompanying the proposal should advise EDA of whether any other organization or Federal agency is or will be considering the proposal. Any non-EDA contributions to the project, whether by the performing organization or third parties, should be mentioned.

Proposals should be submitted to Beverly L. Milkman, Director, Office of Planning, Technical Assistance, Research and Evaluation, Economic Development Administration, Room 7866, U.S. Department of Commerce, Washington, DC 20230. Proposals that are postmarked after March 14, 1986, may not be considered.

Applicants whose proposals are not selected will be notified by June 13, 1986.

Applicants may be subject to pre-award accounting system surveys by the Department of Commerce's Office of Inspector General.

Applicants who have delinquent accounts receivable with the Federal government may not receive new awards until these debts have been paid or arrangements to pay them have been approved by the Department of Commerce.

Eligibility for Specific Solications: In addition to using research and evaulation funds to support proposals

submitted under the procedures described above, EDA may during the fiscal year identify other studies, including program evaluations, it wishes to sponsor.

Organizations and individuals interested in being invited to respond to Soliciations of Applications (SOAs) to conduct such studies should submit information on their capabilities and experience to the address listed above. This information will be used to determine an organization's or individual's eligibility to compete for projects under specific SOAs. Applicants who submit information postmarked after March 14, 1986, may not be invited to respond to SOAs this fiscal year.

Further Information: For further information call David H. Geddes at (202) 377–4085, at EDA Headquarters in Washington, DC.

VII. Program: Public Works and Development Facilities Assistance

(Catalog of Federal Domestic Assistance: 11.300 Economic Development Grants and Loans for Public Works and Development Facilities. 11.304 Economic Development Public Works Impact Program (PWIP))

Summary: The Economic Development Administration announces its policies and application procedures for funds available for the Public Works program under the authority of Titles I and IV of the Public Works and Economic Development Act of 1965, as amended, (PWEDA), 42 U.S.C. 3131 and 42 U.S.C. 3171(a)(3).

Eligibility: Eligible applicants under this program are: any State, or political subdivision thereof, Indian tribe, or private or public non-profit organization or association representing any redevelopment area or part thereof, if the project is located within an EDA-designated redevelopment area. Further information on the areas which are eligible for this EDA program is available from EDA's Regional Offices.

Program Objective: The purpose of the Public Works grant program is to assist communities with the funding of public works and development facilities that contribute to the creation or retention of private sector jobs and to the alleviation of unemployment and underemployment. Such assistance is designed to help communities achieve lasting improvement by establishing stable and diversified local economies, and improving local living conditions and the economic environment. In keeping with the mandate of EDA, and especially in view of current rural distress, applications from rural communities will be reviewed with particular interest.

Funding Availability: Funds in the amount of $112 million are available for this program.

Funding Instrument: EDA will provide grants with maximum EDA participation normally ranging from 50 percent to 80 percent of the project cost. Applicants will be required to provide the local share.

Selection Criteria: For both Regular Public Works projects and Public Works Impact Program (PWIP) projects, favorable consideration will be given to projects which best meet the relative needs of eligible areas, and are in areas of high unemployment and/or low per capita income.

I. Regular Public Works Projects

A. *Favorable consideration* may be given to projects which are eligible under section 101(a)(1) (A)–(C) of PWEDA, 42 U.S.C. 3131(a)(1) (A)–(C), if such projects:

1. Improve the opportunities, in the area where such project is or will be located, for the successful establishment or expansion of industrial or commercial plants or facilities;

2. Assist in creating or retaining private sector jobs in the near-term and assist in the creation of additional long-term employment opportunities which are not transferred from any other area of the United States, and have a low cost per job in relation to total project cost;

3. Benefit the long-term unemployed and members of low-income families who are residents of the area to be served by the project;

4. Fulfill a pressing need of the area, or part thereof, in which it is, or will be, located;

5. Are consistent with the EDA approved overall economic development program (OEDP) for the area in which it is, or will be, located, and have been recommended by the OEDP Committee, and have broad community support;

6. Are supported by significant private sector investment;

7. Have adequate local share of funds with evidence of firm commitment and availability;

8. Complement Department of Commerce goals such as reducing the Federal trade deficit by increasing export development, assisting minority business development, and assisting the development of domestic fisheries.

Consideration factors cited in 1 to 8 above are weighted equally.

B. *Industrial park/site projects.* Projects which will primarily serve an industrial park or site will be evaluated on such additional factors as the:

1. Occupancy rates for existing developed industrial acres currently available within a 25 mile radius of the project site (For cities with populations over 50,000, the prescribed area may be determined by an analysis of industrial sites within an established industrial area, which may be less than a 25 mile radius. Contact the Economic Development Representative for the area or the appropriate EDA Regional Office for assistance.);

2. Commitments in writing from identified tenants to locate in the industrial park or site. Commitments must include description of industry, the number of jobs created or saved and an implementation schedule;

3. Plans for maximum utilization of the industrial park or site;

4. Pressing need of the area for industrial park or site space to attract potential firms; i.e., high occupancy rate of existing industrial parks within the prescribed area or lack of developed and marketable industrial parks or sites within the prescribed area.

C. *Favorable consideration is not likely for projects which:*

1. Do not create new employment opportunities or save existing jobs but transfer existing jobs from one area of the United States to another;

2. Do not benefit the long-term unemployed;

3. Cannot be implemented within a reasonable period of time;

4. Involve substantial land purchase;

5. Involve public buildings such as hospitals, jails, fire stations, etc.;

6. Do not have the applicant's share of project funding readily available;

7. Support tourism or recreational activities, unless it can be demonstrated that tourism is the major industry in the area or will assist in creating a significant number of jobs and substantially diversify the area's economy, in which case the project must directly assist in providing job opportunities for the unemployed and underemployed residents of the area and otherwise support the long-term growth of the area;

8. Involve industrial parks, when there is evidence of current vacancies in developed industrial parks or sites in close proximity to the proposed project area.

No support will be provided for commercial activities such as parking garages, pedestrian walkways and non-industrial street repairs or beautification improvements.

II. Public Works Impact Program

A. *Favorable consideration* may be given to Public Works Impact Program (PWIP) projects eligible under section

101a(1)(D) of PWEDA, 42 U.S.C. 3131(a)(1)(D), if such projects:

1. Directly or indirectly assist in creating employment opportunities by providing immediate useful work (i.e. construction jobs) or other economic benefits for the unemployed and underemployed residents in the project area;

2. Primarily benefit low income families by providing essential services or satisfy a pressing public need;

3. Have on-site labor costs as a substantial portion of the total estimated project costs;

4. Can begin construction quickly;

5. Can be substantially completed within 12 months from the start of construction;

6. Improve the community or economic environment in areas of severe economic distress.

No support will be provided for commercial activities such as parking garages, pedestrian walkways and non-industrial street repairs or beautification improvements.

Pre-Application Procedures: To establish the merits of project proposals, interested applicants should first contact the Economic Development Representative for the area. The EDA regional office can furnish the name, address and telephone number of the Economic Development Representative for the applicant's area who will provide a pre-application form and arrange for pre-application conferences as needed. EDA will screen proposals before authorizing the submission of a formal application. Proposals will be evaluated based upon:

A. The conformance with statutory requirements and with the selection criteria mentioned above;

B. The merits of the proposed projects in addressing the relative economic development needs of eligible areas;

C. The availability of funds as allocated to the Regional Offices.

Processing time for pre-application proposals will depend on the completeness of information provided in the pre-application form and supporting documents at the time of submission. Project proposals that require additional information from applicants or other sources may be returned to correct deficiencies.

Formal Application Procedures: Following a review of project proposals, EDA will invite proponents whose projects are selected for funding consideration to submit a formal application. Proponents of project proposals not selected for funding consideration will be so advised as soon as possible.

EDA will evaluate applications for conformance with published statutory, regulatory and policy requirements, including the project selection criteria mentioned hereinbefore.

Applications proposed for funding under this program are subject to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs."

Applicants who have delinquent accounts receivable with the Federal government may not receive new awards until these debts have been paid or arrangements to pay them have been approved by the Department of Commerce.

When all of EDA's Regular Public Works funds and PWIP funds have been awarded, unsuccessful applicants will be notified of the status of their applications as soon as possible.

Previously Authorized Applications: Project applications authorized but not funded in the previous fiscal year remain eligible for funding consideration. Applications received by September 30, 1985, will be processed according to the selection criteria published for FY 1985. Those applications not received by EDA by September 30, 1985, must be consistent with the selection criteria published in this notice and submitted on application forms issued by EDA for FY 1986. For that purpose, FY 1986 application forms may be obtained from EDA's regional offices.

Further Information: For further information contact the appropriate EDA Regional Office (see list below).

VIII. Program: Economic Adjustment Assistance

(Catalog of Federal Domestic Assistance Nos.: 11.307 and 11.311 Special Economic Development and Adjustment Assistance Program—Long-Term Economic Deterioration (LTED) and Sudden and Severe Economic Dislocation (SSED))

Summary: The Economic Development Administration announces its policies and application procedures for grants available under its Economic Adjustment Program. This program authorized under Title IX of the Public Works and Economic Development Act of 1965, as amended, (PWEDA), 42 U.S.C. 3241—3245, may assist areas experiencing long-term economic deterioration (LTED) and areas threatened or impacted by sudden and severe economic dislocation (SSED).

Program Objective: The LTED program assists eligible applicants in implementing strategies that halt and reverse the long-term decline of their economies. Grants for Revolving Loan Funds (RLF) are usually provided under the LTED program.

The SSED program assists eligible applicants respond to actual or threatened major job losses (dislocations) and other severe economic adjustment problems. It is designed to assist communities prevent a sudden, major job loss, to reestablish employment opportunities as quickly as possible after one occurs, or to meet special needs resulting from severe changes in economic conditions. SSED assistance is intended to respond to structural rather than cyclical job losses. Thus, the dislocation must involve a permanent job loss. Assistance may be in the form of a grant to develop a strategy to respond to the dislocation (Strategy Grant) or a grant to implement an EDA approved strategy (Implementation Grant).

In light of the current high level of economic distress in rural areas and consistent with EDA's original mandate, particular interest will be given to Title IX projects designed to mitigate the serious economic adjustment problems rural areas of the Nation currently are experiencing.

Funding Availability: Grant funds in the amount of $26 million are available for the Economic Adjustment program in FY 1986. Of the amount, $14 million will be available for the SSED program and $12 million will be available to fund RLFs. Note: only first time recipients will be eligible to receive LTED/RLF funds in FY 1986.

Funding Instrument: Normally, EDA requires Title IX grant applicants to provide a minimum of 25 percent of the project cost. The local share for the RLF program must be in cash. The local share for the SSED program may be in cash and/or in-kind.

Eligible Applicants: Eligible applicants for areas meeting the eligibility criteria described below include: a redevelopment area or economic development district established under Title IV of this Act, (PWEDA), 42 U.S.C. 3161; an Indian tribe; a State; a city or other political subdivision of a State, or a consortium of such political subdivisions; a Community Development Corporation defined in the Community Economic Development Act, 42 U.S.C. 9801; or a nonprofit organization determined by EDA to be the representative of a redevelopment area.

Eligible Areas:

A. *LTED.*

In order to receive priority consideration for funding under the LTED program, an area must be experiencing at least one of three

economic problems: very high unemployment; low per capita income; or chronic distress, failure to keep pace with national economic growth trends over the last five years. Eligibility is determined statistically. Further information is available from EDA's Regional Offices.

B. *SSED:*

In order to receive priority consideration for funding under the SSED program, an area must show actual or threatened permanent job losses that exceed the following threshold criteria, unless otherwise determined by the Assistant Secretary:

1. For areas not in the Metropolitan Statistical Areas:

a. If the unemployment rate of the Labor Market Area exceeds the national average, the dislocation must amount to the lesser of the two (2.0) percent of the employed population, or 500 direct jobs.

b. If the unemployment rate of the Labor Market Area is equal to or less than the national average, the dislocation must amount to the lesser of four (4.0) percent of the employed population, or 1,000 direct jobs.

2. For areas within Metropolitan Statistical Areas:

a. If the unemployment rate of the Metropolitan Statistical Area exceeds the national average, the dislocation must amount to the lesser of one-half (0.5) percent of the employed population, or 4,000 direct jobs.

b. If the unemployment rate of the Metropolitan Statistical Area is equal to or less than the national average, the dislocation must amount to the lesser of one (1.0) percent of the employed population, or 8,000 direct jobs.

Additionally, fifty (50) percent of the job loss must result from the action of a single employer, *or* eighty (80) percent of the job loss must occur in a single industry classification (i.e., two digit SIC code).

In the case of a Presidentially declared natural disaster, the area eligibility criteria are waived. In other similarly exceptional circumstances, the criteria may be partially waived at the discretion of the Assistant Secretary.

Actual dislocation must have occurred within one year and threatened dislocations must anticipated to occur within two years of the date EDA is contacted.

Evaluation Criteria: Proposals will be evaluated based on conformance with statutory and regulatory requirements, the economic adjustment needs of the area, the merits of the proposed project in addressing those needs and the applicant's ability to manage the grant effectively. Consistent with the Statement of Purpose (Sec. 2 of PWEDA) proposals involving the transfer of jobs from one area of the United States to another generally will not be considered. The criteria listed below are weighted equally.

A. *LTED/RLF Evaluation Criteria.*

Key factors in EDA's selection of proposed LTED/RLF projects include:

1. *Economic and Financial Needs of the Project Area:*

a. Areas with the highest levels of economic distress (high unemployment, low per capita income, vacant plants and deteriorating infrastructure, etc.) will receive priority consideration.

b. Need for RLF financing will be evaluated based on the applicant's analysis of the local capital market and how clearly this analysis defines the financial problems to be addressed by the RLF project.

c. Applicant need for grant funds to carry out the project will be based on assignment of its financial resources (e.g. budget deficit or surplus).

2. *Objectives and Benefits of Proposed Projects:* Priority will be given to projects which can:

a. Stimulate private sector employment. The number and types of jobs to be created/retained will be key factors in project selection along with the job/cost ratio established for the RLF portfolio as a whole;

b. Target assistance to meet program objectives and to support specific economic adjustment activities planned or underway in the area (particularly those identified in the OEDP, Title IX strategy, or other plans developed to deal with specific economic adjustment problems affecting the area). This may include target areas, industries, types of employers or other criteria that maximize the impact of assistance on specific needs within the area;

c. Leverage higher ratios of private investment than the required minimum ratio of two private sector investment dollars to one RLF dollar. (Note: the local share or other funds provided by the RLF to finance loans can not be counted as "leveraged" dollars);

d. Direct new job opportunities to the long-term unemployed and underemployed;

e. Assist minorities, women and members of other economically disadvantaged groups in obtaining RLF loans;

f. Provide technical and management assistance for RLF borrowers, in addition to loan funds;

g. Use creative financing techniques to overcome specific gaps in the local capital market;

h. Make loans on a timely basis. The implementation schedule for RLF projects will normally require that RLF loans in the initial round be closed (and all EDA funds disbursed) within 2 years of grant approval;

i. Include a larger matching share than the required 25 percent or secure commitments for future funding from other public or private sources; and

j. Coordinates activities with other economic development organizations, loan programs, employment training programs and private lenders in the area.

3. *Effective Management of the RLF:* EDA will also evaluate proposed projects to determine that the RLF will be properly managed. Key factors include:

a. A strong and effective Loan Administrative Board with broad community representation, including appropriate public, private sector, minority and women's representation.

b. Staff capacity in program and policy development, finance, law, marketing, credit analysis, loan packaging, processing and servicing.

c. Efficient procedures for loan selection, approval, and servicing which emphasize the economic development potential of loans an well as sound management and financing practices.

d. Adequate resources to cover administrative costs of the RLF.

e. The applicant's experience and capacity for administering economic and business loan programs will also be a major factor in project selection. If the applicant has designated another organization to administer the project, EDA will evaluate the experience and capacity of that organization, rather than the applicant's.

Nongovernment (but not including Economic Development District's) applicants must be sponsored by the local of State government having jurisdiction over the project area and the sponsor must be willing to assume responsibility for operating the RLF should the nongovernment entity no longer be able to administer the project.

B. *SSED Evaluation Criteria.*

Key factors in EDA's selection of proposed SSED projects include:

1. The severity of the dislocation as measured by, but not limit to, the following factors:

a. The degree to which the number of dislocated workers exceeds the eligibility threshold;

b. The proportion of the total job loss represented by a single employer;

c. The proportion of employment in a single industry classification represented by the firm(s) closing; and

d. Applicant need for grant funds to carry out the project based on an

assessment of its financial resources (e.g. budget deficit or surplus).

2. The objectives and benefits of proposed activities as measured by the extent to which:

a. *For Implementation Grants:*

(1) Job creation or retention in the near term is emphasized versus more long-term, general economic development;

(2) The jobs to be created and/or retained are permanent, will directly benefit the dislocated workers, and are new employment opportunities and not transferred from one area of the United States to another;

(3) The response to the problem is timely;

(4) EDA assistance will be complemented by, or will complement, appropriate State and local efforts, for example, training and job placement services, other Federal investments, for example, Urban Development Action Grants, and private sector support;

(5) The adjustment strategy and implementation activities proposed demonstrate an appropriately creative approach to addressing the dislocation;

(6) The cost per job created or retained is minimized;

(7) In the case of a Revolving Loan Fund, the recycled loan proceeds generate economic development benefit; and

(8) The local matching share exceeds the required 25 percent.

b. *For Strategy Grants:*

(1) Applicant has demonstrated the capacity to manage the planning process and subsequent implementation activities;

(2) Proposed scope of work is responsive to the problem;

(3) The focus of the planning effort is on the generation of practical and implementable solutions; and

(4) The local matching share exceeds the required 25 percent.

Pre-Application Procedures: Interested applicants should contact the Economic Development Representative for the area or the appropriate EDA Regional Office for a proposal package. The EDA Regional Office can furnish the name, address and telephone number of the Economic Development Representative for applicant's area.

Project proposals, submitted by eligible applicants, will be evaluated by EDA on the basis of:

- Conformance with the evaluation criteria mentioned above and statutory and policy requirements; and
- The availability of funds.

Formal Application Procedures: Following a review of project proposals, EDA will invite proponents whose projects are selected for funding consideration to submit a formal application. Proponents whose project proposals are not selected for funding consideration will be so advised as soon as possible.

EDA will evaluate applications for consideration with published statutory, regulatory and policy requirements.

Applications proposed for funding under this program are subject to the requirements of Executive Order 12372 "Intergovernmental Review of Federal Programs".

Applicants who have delinquent accounts receivable with the Federal government may not receive new awards until these debts have been paid or arrangements to pay them have been approved by the Department of Commerce.

When all of EDA's funds for SSED and LTED programs have been awarded, unsuccessful applicants will be notified of the status of their applications as soon as possible.

Further Information: For further information about this program, contact the appropriate EDA Regional Office or Paul J. Dempsey, Director, Office of Economic Adjustment, Economic Development Administration, Room 7212, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377-2659.

IX. Program: Applications for Loan Guarantees

(Catalog of Federal Domestic Assistance: 11.301 Economic Development—Business Development Assistance; Guaranteed Loans)

Summary: EDA is prepared to guarantee up to eighty percent (80%) of the principal and interest of loans to be made by private lenders to private borrowers for the purchase of fixed assets and/or for working capital for projects located in areas eligible for EDA assistance. EDA loan guarantees are made available to help businesses establish, maintain, or expand operations in eligible urban and rural areas throughout the Nation. Guarantees made under this program are made at the discretion of the Assistant Secretary for Economic Development. Incomplete applications or applications that do not conform to program requirements will be rejected by EDA.

Preapplication Procedures: Applicants should contact the appropriate EDA Regional Office Business Loans Division to discuss their proposals. EDA will screen proposals before authorizing the issuance of a formal application. Proposals will be evaluated based upon conformance with the following:

1. Statutory requirements contained in Public Law 89-136, as amended, 42 U.S.C. 3142 et seq. (the Act);

2. Regulatory requirements contained in 13 CFR Part 306 and 309, and restated in this notice; and

3. Provisions of Office of Management and Budget (OMB) Revised Circular A-70, dated August 24, 1984 (A-70).

OMB Circular A-70 (Revised) Requirements: All loan guarantees must conform to the requirements of A-70, without exception. The most significant requirements of A-70 are as follows:

1. Only loans which are secured by first priority, unsubordinated liens on collateral having value in excess of the full amount of the loan will be guaranteed.

2. An annual guarantee fee, payable quarterly, equal to one-half of one percent of the outstanding contingent liability will be charged. This fee is subject to change at any time prior to approval of a guarantee.

3. Not more than eighty percent (80%) of the principal and the interest on a loan may be guaranteed.

4. The Lender will bear a significant portion of the risk of loss on the loan. EDA will not permit other security, guarantees or any other arrangement that would not insure ratably to EDA for that portion of the loan not guaranteed by EDA.

5. No loan directly involved with tax-exempt obligations, such as industrial revenue bonds, will be guaranteed.

Supplementary Information:

1. Amount of funding available: EDA is authorized to commit up to $150 million to guarantee contingent liability for loan principal in fiscal year 1986, which ends September 30, 1986.

2. Type of Financial Assistance: EDA will consider proposals for the guarantee of the loans made by private lending institutions to private borrowers to finance the costs of fixed assets or for working capital purposes. EDA will not accept applications for projects which involve real estate development for either investment or speculation purposes.

3. Who May Apply: Applications will be authorized by EDA only after review and acceptance of satisfactory project proposals. Applications will be accepted only from private lending institutions (the "applicant") for the guarantee of loans to private business enterprises.

4. Long-Term Employment: EDA seeks to create or retain permanent private-sector jobs in EDA eligible areas. Accordingly, the project for which the applicant seeks financial assistance must be reasonably calculated to provide more than a temporary

alleviation of unemployment or underemployment within the eligible area where the project is or will be located.

5. Repayment Ability: The private lender and EDA must find that there is reasonable assurance of repayment of the guaranteed loan.

6. EDA Guarantee Required: No loan will be guaranteed by EDA unless the application is supported by evidence that the financial assistance applied for is not otherwise available to the prospective borrower from either private lenders without a guarantee or from other Federal agencies on terms which in the opinion of EDA will permit accomplishing the project.

General Conditions of Assistance:

1. Amount of Loan: EDA will not ordinarily approve an application for the guarantee of a loan with a face value over $10 million or under $600,000.

2. Term of Loan: The term of a guaranteed fixed asset loan cannot exceed the weighted average estimated useful economic life of the project fixed assets, but in no event can the term of such a loan exceed twenty-five (25) years. The term of a guarantee working capital loan ordinarily may not exceed five (5) years, and the loan should be fully amortized during its term.

3. Guarantee Percentage and Interest Rate: Pursuant to A–70, EDA may guarantee up to eighty percent (80%) of the face value of a loan. However, applicants requesting an eighty percent (80%) guarantee will be required to justify why a lesser guarantee percentage would not be acceptable. As a general rule, EDA will not offer to guarantee a loan in excess of the following percentages and interest rates:

80% guarantee—New York prime rate plus 1.0%
70% guarantee—New York prime rate plus 1.5%
60% guarantee—New York prime rate plus 2.0%
50% guarantee—New York prime rate plus 2.5%

Applicants will be required to fully justify the reason for requesting a higher rate.

4. Guarantee Fee: Pursuant to A–70, EDA will charge an annual guarantee fee, payable quarterly, equal to one-half of one percent of the outstanding contingent liability. EDA reserves the right to change this fee at any time prior to approval of the guarantee.

5. Lender's Risk: That portion of the loan not guaranteed by EDA must be at risk to the applicant throughout the term of the loan. This precludes the applicant from obtaining any additional security, guarantee or compensating balances to separately secure the unguaranteed portion of the loan. This does not preclude normal loan participation arrangements by the lender, provided that any such participation is acceptable to EDA. EDA will be obligated to deal only with the applicant, and all participants must be eligible as applicants.

6. Other Lender-Borrower Relationships: Where an applicant has other creditor-debtor relationships with the prospective borrower, EDA will seek assurances that these relationships will not create conflicts with EDA's interest in the applicant's servicing of the loan for which a guarantee is sought. The applicant will be asked to demonstrate the absence of such conflicts. Ordinarily, EDA will not accept an application from an applicant who has existing short-term revolving working capital financing extended to the borrower.

7. EDA Investment Per Job: EDA will consider only those projects that have an EDA investment exposure of $20,000 or less per permanent job to be created or saved.

8. Repayment Ability: Only projects that demonstrate reasonable assurance of repayment are eligible to receive EDA financial assistance. The applicant must demonstrate why it is reasonably certain the borrower will be able to repay the loan. As a minimum, the application must include:

A. Applicant's normal detail credit analysis, including a narrative discussion of company history, management, product, production capability, market conditions, finances, collateral, and repayment ability (with ratio analyses compared to industry standards);

B. A minimum of three (3) years certified financial statements of the prospective borrower;

C. Financial statements of the prospective borrower, current within ninety (90) days of the date of the application:

D. Pro forma balance sheets, income and cash flow statements of the prospective borrower on a month-by-month basis for the first year and on a quarterly basis for the next two (2) years;

E. One copy of the proposed note and loan agreement between the applicant and the prospective borrower.

9. Adequate Collateral: The applicant must document why it is reasonably certain that complete collateral coverage exists. Only projects that demonstrate that the full amount of the loan is covered exclusively by unsubordinated first priority security interest on collateral offered by the borrower will be considered. There will be no exceptions to this requirement. Proof and documentation of collateral coverage shall include but not be limited to current appraisals as to the fair market and liquidation value of the collateral that will support the loan. If the purchase of new machinery and equipment constitutes all or part of the prospective project cost, of an appraisal. Where real property is to be pledged as collateral, a description and evidence of ownership must be included with appraisals acceptable to EDA.

10. Guarantees: EDA will normally require personal guarantees from principals of borrowers in closely-held firms, secured by collateral where deemed necessary. Similarly, EDA will require guarantees from related firms when deemed necessary to support the EDA financial assistance. In the case of personal guarantors, EDA, will required current (not over ninety (90) days old at the time the application is filed) personal financial statements signed by the prospective guarantor, and where appropriate and necessary to support the guarantee, by the guarantor's spouse, and disclosing community and individual assets and indebtedness, when applicable.

11. Equity Requirements: All applications for EDA financial assistance shall be supported by adequate existing and/or proposed equity so as to enhance the success of the proposed project and lessen EDA's potential exposure. All proposed projects shall be supported by minimum equity capital to the following extent:

A. For guaranteed *working capital loans,* the prospective borrower must have existing net working capital equal to not less than fifteen percent (15%) of its total working capital needs.

B. For guaranteed *fixed asset loans,* the prospective borrower must provide an equity investment in the project of at least fifteen percent (15%) of the aggregate project cost.

C. The Prospective borrower must provide twenty-five percent (25%) of the aggregate project cost for:

a. New businesses with no operating history;

b. Loans without full personal and/or corporate guarantee of stockholders owning ten percent (10%) or more of the borrower;

c. Energy-related businesses;

d. Ventures which EDA determines to be above-average risk.

12. Feasibility Report: An independent technical, financial, and economic feasibility report by firm acceptable to EDA will be required for all applications for new ventures involving a total

project cost of $1 million or more and for projects involving tourism or recreational facilities. Such a report must be related to the pro forma operating statements associated with the application. Independent feasibility studies may also be required for other applications, as deemed necessary by EDA.

13. Tax-Exempt Obligations: The EDA project cannot share collateral with or include elements financed with tax-exempt obligations, such as industrial revenue bonds. Ongoing Applicant Responsibilities

A. Upon approval of a guaranteed loan, the applicant's responsibilities shall include, but are not limited to executing such care and diligence in the disbursement, servicing, collection and liquidation of the guaranteed loan as would be exercised by a reasonable and prudent commercial lender in dealing with a loan of its funds without the EDA guarantees.

B. In the event of the subsequent default on the loan, unless EDA elects otherwise, the applicant will have full responsibility for servicing and liquidating the loan prior to making demand on EDA for payment under the EDA guarantee. EDA shall be obligated to pay that portion of the loan guaranteed after the deduction of all proceeds of the liquidation less reasonable expenses directly attributable to the liquidation.

Failure to perform these responsibilities satisfactorily may preclude EDA from honoring its guarantee. EDA will examine the applicant's records before honoring any guarantee.

Application Requirements

1. The application shall include the following:

A. A signed statement by the borrower assuring that it will not use the EDA financial assistance to relocate jobs from one labor area to another or to close facilities involved in the EDA-guaranteed project;

B. Approval of the application by the appropriate agency or instrumentality of the State or political subdivision in which the project is located, together with a signed statement by that local authority that the project is consistent with an Overall Economic Development Program approved by EDA;

C. Full disclosure of the amount and nature of all fees charged to the borrower by attorneys, agents or other persons to expedite the application. Appropriate fees and charges may include services such as accounting, legal, engineering and appraisals. Packaging and/or lobbying expenses are not allowable project costs and no proceeds of the loan may be used indirectly for attorneys' or consultants' fees in connection with securing EDA's guarantee. EDA may permit reasonable fees and charges as allowable project costs. EDA will not permit any fees or charges that are contingent upon project approval.

D. An agreement that neither the borrower nor the applicant will employ or retain for professional services any person who on behalf of EDA occupied a position or engaged in activities which EDA determines involves discretion with respect to the granting of assistance under the Act. This agreement shall remain in effect for two years after EDA offers assistance to the applicant.

E. An application for character/integrity investigation (Name Check Form CD–46) for each officer, the chief financial manager, and for each individual owning or controlling at least twenty percent (20%) of the borrower.

F. Documentation satisfactory to EDA to substantiate that the guaranteed loan will not create unfair competition within the meaning of section 702 of the Act. Section 702 unfair competition results of the project would increase the production of goods, materials, of commodities, or the availability of services or facilities, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial of industrial enterprises. Applicants are encouraged to submit borrower's data for this requirement prior to or within thirty (30) days of receiving authorization to apply for EDA financial assistance to expedite progressing of the loan guarantee. Applicants and borrowers should understand that expenses incurred prior to approval of a loan guarantee are made solely at the applicant's or borrower's expense.

G. A description of state and/or local government assistance to the project.

2. Loan guarantees are also subject to the following statutes:

A. Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251–1376;

B. Davis–Bacon Act, as amended, 40 U.S.C. 276a–276a–5;

C. The Architectural Barriers Act of 1954, as amended, 42 U.S.C. 4151–4157; See 13 CFR 309.14;

D. The National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321–4370; See CFR 309.18;

E. The National Historic Preservation Act of 1966, 16 U.S.C. 470–470W–6;

F. The Wild and Scenic River Act, as amended, 16 U.S.C. 1271–1287;

G. The Clean, Air Act, as amended, 42 U.S.C. 7401–7626;

H. The Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4001–4128.

Application Submission: Proposals should be submitted to the appropriate EDA Regional Office at the earliest practical date but, in no event, later than May 30, 1986. Proposals received after this date may not be considered during FY 1986. Completed applications for authorized project should be submitted no later than June 30, 1986. Incomplete applications will be rejected by EDA.

Further Information: For further information contact the Chief of the Business Loans Division of the Regional Office that services your State.

X. Ineligible Expenditures

Attorneys' and consultants' fees, whether direct of indirect, expended for securing or obtaining grants and contracts are not eligible project costs for the programs announced above.

XI. Accounting System Survey

Where EDA has reason to doubt whether the applicant's financial management system meets the standards prescribed in OMB Circular A–102 or A–110, as applicable, it may request the applicant to allow the Department's Office of Inspector General to conduct a pre-award accounting system survey.

XII. EDA Regional Offices

The EDA Regional Offices and the States they cover are:

- Philadelphia Regional Office, 4th Floor, Mall Building, 325 Chestnut Street Philadelphia, Pennsylvania 19106, Telephone: (215) 597–4603; serving Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, Virgin Islands, Rhode Island, Vermont, Virginia, Virgin Islands, and West Virginia.
- Atlanta Regional Office, Suite 750, 1365 Peachtree Street, NW., Altanta, Georgia 30309, Telephone: (404) 881–7401; serving Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.
- Chicago Regional Office, Suite A–1630, 175 W. Jackson Blvd., Chicago, Illinois 60604, Telephone: (312) 353–7707; serving Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.
- Austin Regional Office, Suite 201, Grant Bldg., 611 East Sixth Street, Austin, Texas 78701, Telephone: (512)

482–5461; serving Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

• Denver Regional Office, Room 200 Tremont Center, 333 West Colfax Avenue, Denver, Colorado 80204, Telephone: (303) 844–4714, serving Colorado, Iowa, Kansas Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.

• Seattle Regional Office, Suite 500, Lake Union Bldg., 1700 Westlake Avenue, North, Seattle, Washington 98109, Telephone: (206) 442–5096; serving Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, and Washington.

Dated: January 6, 1986.

Orson G. Swindle, III,

Assistant Secretary for Economic Development.

[FR Doc. 86–1404 Filed 1–22–86; 8:45 am]

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Federal Register

Thursday
January 23, 1986

Part III

Department of Agriculture

Forest Service

36 CFR Part 223
Sale and Disposal of Timber; Suspension and Debarment; Proposed Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

Sale and Disposal of Timber; Suspension and Debarment

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration issued revised Federal Procurement Regulations October 4, 1982 (47 FR 43692). Subsequently, the Department of Agriculture issued implementing regulations (48 FR 17079, April 21, 1983) which no longer included Forest Service timber sale contracts. Accordingly, Forest Service rules governing suspension and debarment of timber sale purchasers at 36 CFR 223.9(c) were rendered obsolete. To avoid a critical gap in protecting the public interest on timber sale contracts, the Forest Service issued an interim rule at § 223.12 which was immediately effective on May 27, 1983 (48 FR 23818). Section 223.12 was recodified at 49 FR 2760, January 23, 1984, and appears as Subpart C consisting of §§ 223.130 through 223.145.

This proposed rule is issued to provide opportunity for public review and comment before adoption of final rules governing suspension and debarment of National Forest System timber purchasers. The proposed rule would clarify Forest Service procedures for suspension and debarment. This proposed rule incorporates editorial changes to improve overall clarity of the text and specifically to clarify that this rule would apply solely to suspension and debarment from Forest Service timber sales. The proposed rule also substantially adopts the revisions to the government-wide procurement regulations published as the Federal Acquisition Regulations (FAR), 48 CFR 9.4 (effective April 1, 1984).

The intended effect of the rule is to ensure that Forest Service timber sale contracts are awarded to responsible purchasers.

DATE: Comments must be received on or before March 10, 1986.

ADDRESSES: Send comments to: R. Max Peterson, Chief (2400), Forest Service, USDA, P.O. Box 2417, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Lloyd W. Olson, Timber Management Staff, Forest Service, USDA (202) 475–3758 or Rhea Daniels Moore, Attorney, Natural Resources Division, Office of General Counsel, USDA (202) 447–4801.

SUPPLEMENTARY INFORMATION:

Background

This rulemaking action would continue to make Forest Service timber sale contract suspension and debarment procedures consistent with the new government-wide policies and procedures applicable to procurement actions. Effective September 30, 1982, the policies and procedures of the Federal Procurement Regulations (41 CFR Subpart 1–1.6) were, after extensive debate and comment, revised by the General Services Administration to implement Office of Federal Procurement Policy Letter 82–1 and to make debarment of procurement contractors effective government-wide (FPR Temporary Regulation 65, 47 FR 43692, October 4, 1982). Those government-wide procurement regulations have been modified and republished in the Federal Acquisition Regulations (48 CFR 9.4) and became effective on April 1, 1984.

The Department of Agriculture, in turn, was required to implement the new government-wide debarment regulations on procurement contracts. On April 21, 1983, the Department of Agriculture regulations on debarment and suspension at 41 CFR Subpart 4–1.6 were revised to apply only to procurement transactions; they no longer include Forest Service timber sale contracts (48 FR 17079, April 21, 1983). Therefore it was necessary that the Forest Service publish an interim rule effective immediately to govern suspension and debarment of purchasers of National Forest System timber (48 FR 23818–23, May 27, 1983). This interim rule was extended July 11, 1984, and remains in effect until removed by subsequent rulemaking (49 FR 28241).

This proposed rule is patterned after the interim rule which, in turn, essentially adopted the policies and procedures of FPR Temporary Regulations 65 and 48 CFR 9.4 and consolidated the codification of policies and procedures on suspension and debarment of National Forest System timber purchasers previously found at 36 CFR 223.9 and 41 CFR 4–1.6. The interim rule published at 36 CFR 223.12 was recodified at 49 FR 2760, January 23, 1984, and appears as Subpart C consisting of §§ 223.130 through 223.145.

This proposed rule would delegate authority to the Deputy Chief, National Forest System (NFS), and the Associate Deputy Chief, Resource Divisions, National Forest System, to act as suspending and debarring officials for Forest Service timber sale contracts. The Deputy Chief, National Forest System, would compile, maintain, and distribute a current list of suspended and debarred National Forest System timber purchasers. This compilation is necessary because suspended and debarred National Forest System timber purchasers are no longer included on the consolidated list of debarred, suspended and ineligible contractors maintained by the General Services Administration concerning procurement actions. This proposed rule clarifies procedures to be followed and would also continue a purchaser's right to appeal a debarring official's decision to debar to the Agriculture Board of Contract Appeals.

Regulatory Impact

This action has been reviewed pursuant to Executive Order 12291, and it has been determined that this regulation is not a major rule. This regulation will have little or no effect on the economy since it is procedural and is invoked only on a case-by-case basis when in the public interest and for the government's protection. For the same reasons, this regulation will not result in any major increase in costs to consumers, industry, or government agencies or have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete on the foreign market.

This action is not a rule as defined in Pub. L. 96–354, the Regulatory Flexibility Act, and thus it is exempt from the provisions of that Act. This proposed rule would not significantly affect the environment, and, therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Controlling Paperwork Burdens on the Public

Under this proposed rule, individuals or firms who receive notice from the Forest Service of suspension or proposed debarment action may present facts and information pertaining to the basis of the action and/or to mitigation of any decision. The proposed rule does not specify the nature or format of any information so provided to the Forest Service. Therefore, the proposed rule would not impose an information collection requirement as that term is defined in Office of Management and Budget (OMB) regulations at 5 CFR 1320.7. Moreover, since 5 CFR 1320.3(c) exempts information collections involving administrative actions and investigations as well as the conduct of criminal proceedings or civil actions against specific individuals or entities by Federal agencies, the rule in its

entirety is exempt from OMB information collection clearance procedures.

List of Subjects in 36 CFR Part 223

Exports, Government contracts, National Forests, Reporting and recordkeeping requirements, Timber.

Therefore, for the reasons set forth above, Part 223 of Chapter II, Title 36, Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Part 223 would continue to read:

Authority: Sec. 14, Pub. L. 94–588, 90 Stat. 2958, 16 U.S.C. 472a.

2. Part 223, Subpart C would be revised to read:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

Subpart C—Suspension and Debarment of Timber Purchasers

Subpart C—Suspension and Debarment of Timber Purchasers

§ 223.130 Scope.

(a) This subpart prescribes policies and procedures governing the debarment and suspension of purchasers of National Forest System timber.

(b) It provides for the listing of debarred and suspended purchasers.

(c) It sets forth the causes, procedures, and requirements for debarment and suspension and for determining the scope, duration, and treatment to be accorded to purchasers listed as debarred or suspended.

§ 223.131 Applicability.

These regulations apply to purchasers of National Forest System timber. They do not apply to Forest Service procurement contracts (See 41 CFR 4–1.6).

§ 223.132 Policy.

(a) The Forest Service shall only solicit timber sale bids from and award contracts to responsible business concerns and individuals. Debarment and suspension by the Forest Service are discretionary actions that, taken in accordance with these regulations, are appropriate means to effectuate this policy.

(b) Debarment and suspension shall be imposed only for the causes and in accordance with the procedures set forth in this subpart. The serious nature of debarment and suspension requires that these actions be imposed only in the public interest, for the Government's protection, and not for the purpose of punishment.

(c) Debarment and suspension actions taken under this subpart shall be based on the administrative record and shall be limited in scope and duration to that necessary to protect the Government's interest.

§ 223.133 Definitions.

As used in this subpart, the following terms shall have the meanings set forth below:

"Adequate evidence" means information sufficient to support the reasonable belief that a particular act or omission has occurred.

"Affiliates." Business concerns or individuals are affiliates if, directly or indirectly, (a) either one party controls or can control the other; or (b) a third party controls or can control both. In determining whether or not affiliation exists, the Forest Service shall consider all appropriate factors, including, but not limited to, common ownership, common management, and contractual relationships.

"Control" means the power to exercise, directly or indirectly, a controlling influence over the management, policies, or activities of an individual or business concern, whether through the ownership or voting securities, through one or more intermediary individuals or business concerns, or otherwise. For purposes of actions under these guidelines, an individual or business concern who owns or has the power to vote more than 25 percent of the outstanding voting securities of another concern, or more than 25 percent of total equity if the other concern has no voting securities, is presumed to control. Such presumption may be rebutted by evidence.

"Conviction" means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of *nolo contendere.*

"Debarment" means action taken by a debarring official under §§ 223.136 through 223.140 to exclude a purchaser from Forest Service timber sale contracting for a reasonable, specified period of time; a purchaser so excluded is "debarred."

"Debarring official" means the Chief of the Forest Service or a designee authorized by the Chief to impose debarment. The designated officials are the Deputy Chief, National Forest System, or the Associate Deputy Chief, Resources Divisions, National Forest System.

"Indictment" means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

"Legal proceedings" means any civil judicial proceeding to which the Government is a party or any criminal proceeding. The term includes appeals from such proceedings.

"Notice" means a written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, or agent for service of process. In the case of an organization, such notice may be sent to any partner, principal officer, director, owner or co-owner, or joint venturer.

"Preponderance of the evidence" means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

"Purchaser" means any individual, organization, or other legal entity that (a) submits bids or proposals for, is awarded, or reasonably may be expected to submit bids or proposals for or be awarded, a Forest Service timber sale contract or (b) conducts business with the Forest Service as an agent or representative of another purchaser.

"Suspending official" means the Chief of the Forest Service or a designee authorized by the Chief to impose suspension. The designated officials are the Deputy Chief, National Forest System, or the Associate Deputy Chief, Resources Divisions, National Forest System.

"Suspension" means action taken by a suspending official under §§ 223.141 through 223.145 to immediately exclude a purchaser from purchasing National Forest System timber for a temporary period, pending completion of an investigation and such legal or debarment proceedings as may ensue; a purchaser so excluded is "suspended."

§ 223.134 List of debarred and suspended purchasers.

(a) The Deputy Chief, National Forest System, shall compile and maintain a current list of National Forest System timber purchasers and affiliates who are debarred or suspended. This list shall be distributed to all Regional Foresters and Forest Supervisors, the General Services Administration, the General Accounting Office, and other Federal agencies requesting said list.

(b) The Forest Service list shall contain the following information:

(1) The purchaser's name and address, and the name and address of any affiliate of the purchaser included pursuant to §§ 223.136(b) or 223.141(c).

(2) The cause(s) for the action (see § 223.137 and § 223.142).

(3) Any limitations to, or deviations from, the normal effect of debarment or suspension.

(4) The effective date of the action and, in the case of debarments, the expiration date.

(5) The name and telephone number of the point of contact in the Forest Service regarding the action.

§ 223.135 Effect of listing.

Purchasers debarred or suspended in accordance with this subpart shall be excluded from receiving Forest Service timber sale contracts, and the Forest Service shall not knowingly solicit or consider offers from, award contracts to, approve a third-party agreement with, or renew or otherwise extend the duration of an existing timber sale contract with these purchasers, unless the Chief of the Forest Service or authorized representative determines, in writing, that there is a compelling reason for such action.

§ 223.136 Debarment.

(a) In accordance with the procedures in § 233.138, the debarring official may, in the public interest, debar a purchaser for any of the causes listed in § 223.137. However, the existence of a cause for debarment does not necessarily require that the purchaser be debarred. In making any debarment decision, the debarring official shall consider the seriousness of the purchaser's acts or omissions and any mitigating factors.

(b) Debarment of a purchaser constitutes debarment of all divisions or other organizational elements of the purchaser, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or classes of sales. The debarring official may extend a debarment decision to include any affiliates of the purchaser, if they are (1) specifically named and (2) given written notice of the proposed debarment and provided an opportunity to respond (see § 223.138(c)).

(c) The debarring official shall transmit the names of individuals or organizations proposed for debarment to Regional Foresters and Forest Supervisors. If a suspension is not in effect at the time debarment is proposed, the Forest Service shall not solicit offers from, award contracts to, approve a third-party agreement with, or renew or otherwise extend any contract with the affected purchaser until a debarment decision is made.

(d) A purchaser's debarment by another Federal agency which sells timber shall be effective throughout the National Forest System, unless the Chief of the Forest Service or authorized representative states in writing the compelling reasons justifying continued sale of timber to that purchaser.

§ 223.137 Causes for debarment.

The debarring official may debar a purchaser for any of the following causes:

(a) Conviction of the purchaser or an affiliate of:

(1) Theft, forgery, bribery, embezzlement, falsification or destruction of records, making false statements, or receiving stolen property;

(2) Fraud, a criminal offense, or violation of Federal or State anti-trust laws, any of which occurred in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract.

(3) Any other offense indicating a lack of business integrity or honesty that seriously and directly affects the present responsibility of the purchaser.

(b) A civil judgment against the purchaser or an affiliate for claims arising out of any of the offenses listed in § 223.137(a).

(c) Cutting and/or removal of more than incidental volumes of undesignated timber from a national forest.

(d) Substantial violation of the terms of one or more government timber sale contracts so serious that debarment is necessary to protect the government's interest, including but not limited to:

(1) Willful failure to perform in accordance with contract terms; or

(2) A history of failure to perform contract terms or of unsatisfactory performance of contract terms. Among actions the Forest Service regards as so serious as to justify debarment are the willful violation or repeated failure to perform or satisfactorily perform National Forest System timber sale contract provisions relating to the following:

(i) Fire suppression, fire prevention and the disposal of slash;

(ii) Protection of soil, water, wildlife, range, cultural and timber resources and protection of improvements when such failure causes significant environmental, resource, or improvements damage;

(iii) Removal of designated timber when such failure causes substantial product deterioration or conditions favorable to insect epidemics;

(iv) Observance of restrictions on exportation of timber;

(v) Observance of restrictions on the disposal of timber from small business set-aside sales;

(vi) Payment for timber designated for cutting and removal;

(vii) Providing access to the Forest Service upon its request to purchaser's books and accounts;

(viii) Payment of damages relating to failure to cut designated timber by termination date.

(e) Any other cause so serious or compelling that it affects the present responsibility of a purchaser of Government timber.

§ 223.138 Procedures for debarment.

(a) *Investigation and referral.* Whenever a Forest Supervisor becomes aware of possible irregularities or any information which may be sufficient cause for debarment of a timber sale purchaser, the Supervisor shall immediately refer the matter through the Regional Forester to the Forest Service debarring official. The referral shall be accompanied by a complete statement of the facts supported by appropriate exhibits along with a recommendation for action. Where the statement of facts indicates a possible criminal offense, the debarring official shall notify the Office of Inspector General, U.S.D.A.

(b) *Decisionmaking process.* (1) Purchaser (and any specifically named affiliates) shall promptly be given an opportunity to submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(2) In actions not based upon a conviction or civil judgment, additional proceedings shall be conducted if it is found that the purchaser's submission in opposition raises a genuine dispute over facts material to the proposed debarment. The official conducting the fact-finding shall promptly—

(i) Afford the purchaser an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the Forest Service presents; and

(ii) Arrange for a transcribed record of the proceedings and make it available at

cost to the purchaser upon request, unless the purchaser and the Forest Service, by mutual agreement, waive the requirement for a transcript.

(3) The purchaser and any affiliates involved may appeal a Forest Service debarring official's decision to debar within 30 days from receipt of the decision. To appeal, a purchaser and any affiliates involved must furnish a written notice to the U.S. Department of Agriculture Board of Contract Appeals, Washington, DC 20250, and a copy of the appeal to the debarring official from whose decision the appeal is taken. The rules and procedures of the U.S. Department of Agriculture Board of Contract Appeals set forth in 7 CFR Part 24, govern debarment appeals.

(c) *Notice of proposal to debar.* Upon receipt of a debarment recommendation and determination that debarment should be initiated, the debarring official shall so advise the purchaser and any specifically named affiliate, by certified mail, return receipt requested. The notice document shall include the following information:

(1) That debarment is being considered.

(2) The reasons for the proposed debarment in terms sufficient to put the purchaser on notice of the conduct or transaction(s) upon which it is based.

(3) The cause(s) relied upon under § 223.137 for proposing debarment.

(4) That the purchaser, within 30 days after receipt of the notice, may submit, in person, in writing, or through a representative, information and argument in opposition to and/or in mitigation of the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts.

(5) That if purchaser requests a meeting with the debarring official pursuant to paragraph (b) of this section, the meeting shall be held within 20 calendar days from the date the request is received. The debarring official may postpone the date of the meeting, if the purchaser requests a postponement in writing. At the meeting, the purchaser, appearing personally or through an attorney or other authorized respresentative, may informally present and explain evidence that causes for debarment do not exist, evidence of any mitigating factors, and arguments concerning the imposition, scope, duration or effects of proposed debarment or debarment. A transcript of the meeting shall not be required.

(6) That if the action is not based upon a conviction or civil judgment and if purchaser's argument in opposition raises a genuine dispute over material facts, the purchaser may request a fact-finding conference on those disputed material facts. Such a conference shall be held within 20 calendar days from the date the request is received unless mutually agreed otherwise. The fact-finding conference shall conform with subparagraph (b)(2) of this section. At least 10 days before the fact-finding conference, the debarring official shall send the purchaser a copy of all documents in the administrative record as of the date of transmittal and not objected to by the Department of Justice.

(7) That any decision to debar is appealable to the Agriculture Board of Contract Appeals pursuant to paragraph (b)(3) of this section.

(8) The potential effect of the proposed debarment (see § 223.134).

(9) If no suspension is in effect under §§ 223.141–223.145, notice that, pending a debarment decision, the Forest Service will not solicit offers from, award contracts to, approve a third-party agreement with, or renew or otherwise extend contracts with the purchaser or any named affiliate.

(d) *Debarring official's decision.* (1) In actions based upon a conviction or civil judgment or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the purchaser. If no suspension is in effect under these regulations, the debarring official shall render the decision within 30 working days after receipt of any information and argument submitted by the purchaser, unless the debarring official extends this period for good cause.

(i) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact shall be promptly prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the purchaser and any other information in the administrative record.

(ii) The debarring official may refer matters involving disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(iii) The debarring official's decision shall be made only after the conclusion of any proceedings with respect to disputed facts.

(2) In any action in which the proposed debarment is not based upon a conviction or civil judgment, the cause for debarment must be established by a preponderance of the evidence.

(e) *Notice of debarring official's decision.*

(1) If the debarring official decides to impose debarment, the purchaser and any affiliates involved shall be given prompt notice by certified mail, return receipt requested. Such notice shall:

(i) Refer to the notice of proposed debarment;

(ii) Specify the reasons for debarment; and

(iii) State the period of debarment, including effective dates (see § 223.139).

(iv) Specify any limitations on the terms of the debarment.

(2) If debarment is not imposed, the debarring official shall promptly notify the purchaser and any affiliates involved, by certified mail, return receipt requested, as well as Regional Foresters and Forest Supervisors.

§ 223.139 Period of debarment.

(a) The debarring official's decision to debar becomes final and effective 30 days after receipt of the notice under § 223.138(e), unless the purchaser files a notice of appeal with the Agriculture Board of Contract Appeals pursuant to § 223.138(b)(3).

(b) Debarment shall be for a period commensurate with the seriousness of the cause(s). Generally, a debarment should not exceed 3 years. If suspension precedes a debarment, the debarring official shall consider the suspension period in determining the debarment period.

(c) The debarring official may extend the debarment for an additional period if that official determines that an extension is necessary to protect the Government's interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined necessary, the debarring official shall initiate and follow the procedures in § 223.138 to extend the debarment.

(d) The debarring official may consider terminating the debarment or reducing the period or extent of debarment, upon the purchaser's request, supported by documentation, for reasons such as:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed;

(5) Other reasons the debarring official deems appropriate. The debarring official shall make final disposition of the reconsideration request in writing and shall set forth the reasons for granting or denying the request.

§ 223.140 Scope of debarment: imputed conduct.

(a) The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a purchaser may be imputed to a purchaser when the conduct occurred in connection with the individual's performance of duties for or on behalf of the purchaser, or with the purchaser's knowledge, approval, or acquiescence. The purchaser's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(b) The fraudulent, criminal, or other seriously improper conduct of a purchaser may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the purchaser who participated in, knew of, or had reason to know of the purchaser's conduct.

(c) The fraudulent, criminal, or other seriously improper conduct of one purchaser participating in a joint venture or similar arrangement may be imputed to other participating purchasers if the conduct occurred for or on behalf of the joint venture or similar arrangement or with the knowledge, approval, or acquiescence of those purchasers. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

§ 223.141 Suspension.

(a) The suspending official may, in the public interest, suspend a purchaser on the basis of adequate evidence for any of the causes in § 223.142, using the procedures in § 223.143.

(b) Suspension is a serious action to be imposed, pending the completion of investigation or legal proceedings, when it has been determined that immediate action is necessary to protect the Government's interest. In assessing the adequacy of the evidence, consideration should be given to how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment shall include an examination of basic documents such as contracts, bids, awards, inspection reports, and correspondence, as appropriate.

(c) Suspension constitutes suspension of all divisions or other organizational elements of the purchaser, unless the suspension decision is limited by its terms to specific divisions, organizational elements, or classes of sales. The suspending official may extend the suspension decision to include any affiliates of the purchaser if there are (1) specifically named and (2) given written notice of the suspension and an opportunity to respond (see § 223.143(c)).

(d) A purchaser's suspension by another Federal agency which sells timber shall be effective throughout the National Forest System, unless the Chief of the Forest System or authorized representative states in writing the compelling reasons justifying continued sale of timber to that purchaser.

§ 223.142 Causes for suspension.

(a) The suspending official may, upon adequate evidence, suspend a purchaser suspected of the following:

(1) Commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain; or (iii) performing a public contract or subcontract;

(2) Violation of Federal or State antitrust statutes relating to the submission of offers;

(3) Commission of theft, forgery, bribery, embezzlement, falsification or destruction of records, making false statements, or receiving stolen property; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a purchaser of Government timber.

(b) Indictment for any of the causes in paragraph (a) of this section constitutes adequate evidence for suspension.

(c) The suspending official may, upon adequate evidence, also suspend a purchaser for any other cause so serious or compelling that it affects the present responsibility of a purchaser of Government timber.

§ 223.143 Procedures for suspension.

(a) *Investigation and referral.* Whenever a Forest Supervisor becomes aware of possible irregularities or any information which may be sufficient cause for suspension under § 223.142, the Supervisor shall immediately refer the matter through the Regional Forester to the Forest Service suspending official. The referral shall be accompanied by a complete statement of the facts supported by appropriate exhibits and a recommendation for action. Where the statement of facts indicates possible criminal offenses, the suspending official shall notify the Office of Inspector General, U.S.D.A.

(b) *Decision-making process.* (1) Purchaser (and any specifically named affiliates) shall promptly be given an opportunity, following the imposition of suspension, to submit, in person, in writing, or through a representative, information and arguments in opposition to the suspension.

(2) In actions not based on an indictment, the suspending official or a designated official shall conduct fact-finding if it is found that the purchaser's submission in opposition raises a genuine dispute over facts material to the suspension and if no determination has been made, on the basis of Department of Justice advice, that substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced. The official conducting fact-finding shall promptly:

(i) Afford the purchaser an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents; and

(ii) Arrange for a transcribed record of the proceedings and make it available at cost to the purchaser upon request, unless the purchaser and the agency, by mutual agreement, waive the requirement for a transcript.

(c) *Notice of suspension.* When a purchaser and any specifically named affiliates are suspended, they shall be immediately advised by certified mail, return receipt requested. Such notice shall specify:

(1) That they have been suspended as of the date of the notice and that the suspension is based on an indictment or other adequate evidence that the purchaser has committed irregularities (i) of a serious nature in business dealings with the Government, or (ii) seriously reflecting on the propriety of further Government dealings with the purchaser; any such irregularities shall be described in terms sufficient to place the purchaser on notice without disclosing the Government's evidence;

(2) That the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue;

(3) The cause(s) relied upon under § 223.142 for imposing suspension;

(4) The effect of the suspension (see § 223.135);

(5) That the purchaser, within 30 days after receipt of the notice, may submit,

in person, in writing, or through a representative, information and argument in opposition to the suspension, including any additional specific information that raises a genuine dispute over material facts. That if the purchaser requests a meeting with the suspending official, the meeting shall be held within 20 calendar days from the date the request is received. The suspending official may postpone the date of the meeting if the purchaser requests a postponement in writing. At the meeting, purchaser, appearing personally or through an attorney or other authorized representative, may informally present and explain evidence that causes for suspension do not exist, evidence of any mitigating factors, and arguments concerning the imposition, scope, duration or effects of suspension. A transcript of the meeting shall not be required; and

(6) That additional proceedings to determine any disputed material facts will be promptly conducted unless (i) the action is based on an indictment; or (ii) a determination is made, on the basis of Department of Justice advice, that the substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced. If appropriate, the purchaser may request a fact-finding conference on disputed material facts. Such a conference shall be held within 20 calendar days from the date the request is received unless mutually agreed otherwise. The fact-finding conference shall conform with paragraph (b)(2) of this section. At least 10 days before the fact-finding conference, the suspending official shall send the purchaser a copy of all documents in the administrative record as of the date of transmittal and not objected to by the Department of Justice.

(d) *Suspending official's decision.* (1) In actions (i) based on an indictment, (ii) in which the purchaser's submission does not raise a genuine dispute over material facts; or (iii) in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official's decision shall be based on all the information in the administrative record, including any submission made by the purchaser.

(2)(i) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact shall be promptly prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the purchaser and any other information in the administrative record.

(ii) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(iii) The suspending official's decision shall be made only after the conclusion of any proceedings with respect to disputed facts.

(3) The suspending official may modify or terminate the suspension or leave it in force for the same reasons as for terminating or reducing the period or extent of debarment (see § 223.139(c)).

(4) Prompt written notice of the suspending official's decision to continue or not continue the suspension shall be sent to the purchaser and any affiliates involved, by certified mail, return receipt requested.

§ 223.144 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of investigation and any ensuing legal proceedings unless sooner terminated by the suspending official or as provided in this section.

(b) If legal proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General requests its extension, in which case it may be extended for an additional 6 months. In no event may a suspension extend beyond 18 months, unless legal proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of the proposed termination of any suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§ 223.145 Scope of suspension.

The scope of suspension shall be the same as that for debarment (see § 223.140), except that the procedures in § 223.143 shall be used in imposing suspension.

Dated: December 27, 1985.

Douglas W. MacCleery,

Deputy Assistant Secretary for Natural Resources and Environment.

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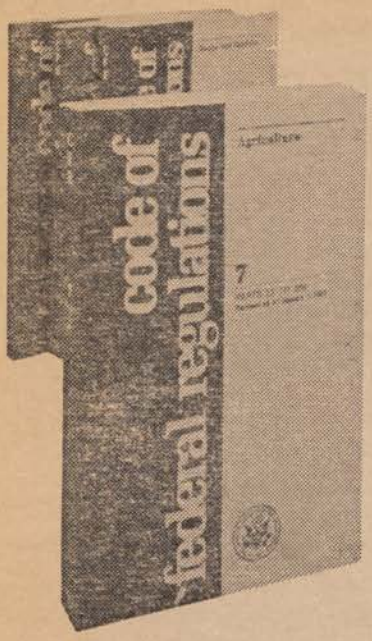

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